

**CHALLENGES FACING THE NEW COMMISSIONER  
OF SOCIAL SECURITY**

---

---

**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON SOCIAL SECURITY  
OF THE  
COMMITTEE ON WAYS AND MEANS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED SEVENTH CONGRESS  
SECOND SESSION

\_\_\_\_\_  
MAY 2, 2002  
\_\_\_\_\_

**Serial No. 107-83**

\_\_\_\_\_

Printed for the use of the Committee on Ways and Means



U.S. GOVERNMENT PRINTING OFFICE

83-375

WASHINGTON : 2003

---

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

## COMMITTEE ON WAYS AND MEANS

BILL THOMAS, California, *Chairman*

PHILIP M. CRANE, Illinois	CHARLES B. RANGEL, New York
E. CLAY SHAW, JR., Florida	FORTNEY PETE STARK, California
NANCY L. JOHNSON, Connecticut	ROBERT T. MATSUI, California
AMO HOUGHTON, New York	WILLIAM J. COYNE, Pennsylvania
WALLY HERGER, California	SANDER M. LEVIN, Michigan
JIM McCRERY, Louisiana	BENJAMIN L. CARDIN, Maryland
DAVE CAMP, Michigan	JIM McDERMOTT, Washington
JIM RAMSTAD, Minnesota	GERALD D. KLECZKA, Wisconsin
JIM NUSSLE, Iowa	JOHN LEWIS, Georgia
SAM JOHNSON, Texas	RICHARD E. NEAL, Massachusetts
JENNIFER DUNN, Washington	MICHAEL R. McNULTY, New York
MAC COLLINS, Georgia	WILLIAM J. JEFFERSON, Louisiana
ROB PORTMAN, Ohio	JOHN S. TANNER, Tennessee
PHIL ENGLISH, Pennsylvania	XAVIER BECERRA, California
WES WATKINS, Oklahoma	KAREN L. THURMAN, Florida
J.D. HAYWORTH, Arizona	LLOYD DOGGETT, Texas
JERRY WELLER, Illinois	EARL POMEROY, North Dakota
KENNY C. HULSHOF, Missouri	
SCOTT McINNIS, Colorado	
RON LEWIS, Kentucky	
MARK FOLEY, Florida	
KEVIN BRADY, Texas	
PAUL RYAN, Wisconsin	

ALLISON GILES, *Chief of Staff*

JANICE MAYS, *Minority Chief Counsel*

---

## SUBCOMMITTEE ON SOCIAL SECURITY

E. CLAY SHAW, Florida, *Chairman*

SAM JOHNSON, Texas	ROBERT T. MATSUI, California
MAC COLLINS, Georgia	LLOYD DOGGETT, Texas
J.D. HAYWORTH, Arizona	BENJAMIN L. CARDIN, Maryland
KENNY C. HULSHOF, Missouri	EARL POMEROY, North Dakota
RON LEWIS, Kentucky	XAVIER BECERRA, California
KEVIN BRADY, Texas	
PAUL RYAN, Wisconsin	

Pursuant to clause 2(e)(4) of Rule XI of the Rules of the House, public hearing records of the Committee on Ways and Means are also published in electronic form. **The printed hearing record remains the official version.** Because electronic submissions are used to prepare both printed and electronic versions of the hearing record, the process of converting between various electronic formats may introduce unintentional errors or omissions. Such occurrences are inherent in the current publication process and should diminish as the process is further refined.

# CONTENTS

Advisories announcing the hearing.....	2, 4, 5, 6, 7, 8	Page
--	------------------	------

## WITNESSES

Social Security Administration, Hon. Jo Anne B. Barnhart, Commissioner .....	11
U.S. General Accounting Office, Barbara D. Bovbjerg, Director, Education, Workforce, and Income Security Issues, accompanied by David L. McClure, Director, Information Technology Management Issues .....	52
Social Security Administration, Office of the Inspector General, Hon. James G. Huse, Jr., Inspector General .....	69
Social Security Advisory Board, Hon. Hal Daub, Chairman .....	73

AARP, Marie Smith .....	84
Consortium for Citizens with Disabilities, Marty Ford .....	88
National Committee to Preserve Social Security and Medicare, Hon. Barbara Kennelly .....	97

## SUBMISSIONS FOR THE RECORD

Alexander, LaJuana, Northwestern Technical College, Rock Spring, GA, state- ment .....	111
American Congress of Community Supports and Employment Services, Steve H. Perdue, letter .....	111
Association of Administrative Law Judges, Bronx, NY, Ronald G. Bernoski, statement .....	114
Association of Attorney-Advisors, Paducah, KY, Lisa Russell Hall, letter .....	124
Federal Bar Association, Social Security Section, Kathleen McGraw, and Frederick R. Waitsman, letter .....	126
Hepatitis C Action Movement, Saratoga Springs, NY, David Marks, state- ment .....	131
National Council of Social Security Management Associations Inc., Hacken- sack, NJ, Anthony T. Pezza, statement .....	132
National Organization of Social Security Claimants' Representatives, Midland Park, NJ, Nancy G. Shor, statement .....	136
National Treasury Employees Union, James A. Hill, statement .....	140



**CHALLENGES FACING THE NEW  
COMMISSIONER OF SOCIAL SECURITY**

---

**THURSDAY, MAY 2, 2002**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON WAYS AND MEANS,  
SUBCOMMITTEE ON SOCIAL SECURITY,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 9:03 a.m., in room B-318 Rayburn House Office Building, Hon. E. Clay Shaw, Jr., (Chairman of the Subcommittee) presiding.

[The advisory and the revised, revised #2, revised #3, revised #4, and revised #5 advisories announcing the hearing follow:]

# ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

## SUBCOMMITTEE ON SOCIAL SECURITY SUBCOMMITTEE ON HUMAN RESOURCES

FOR IMMEDIATE RELEASE  
December 6, 2001  
No. SS-11

CONTACT: (202) 225-9263

### **Shaw and Herger Announce Joint Hearing on the Challenges Facing the New Commissioner of Social Security**

Congressman E. Clay Shaw, Jr. (R-FL), Chairman, Subcommittee on Social Security, and Congressman Wally Herger (R-CA), Chairman, Subcommittee on Human Resources, Committee on Ways and Means, today announced that the Subcommittees will hold a joint hearing on the challenges facing the new Commissioner of Social Security. **The hearing will take place on Thursday, December 13, 2001, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:00 a.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Subcommittees and for inclusion in the printed record of the hearing.

#### **BACKGROUND:**

Jo Anne B. Barnhart was sworn in on November 14, 2001, as the 14th Commissioner of Social Security in a ceremony at the agency's headquarters in Baltimore. Her term will expire on January 19, 2007.

The mission of the Social Security Administration (SSA) is "to promote the economic security of the nation's people through compassionate and vigilant leadership in shaping and managing America's Social Security programs." Established to protect Americans against the loss of income due to retirement, death, or disability, for almost two-thirds of a century Social Security has been enormously successful, reducing poverty among the nation's elderly by 62 percent in the last 30 years. Today, over 45 million Americans receive Social Security, including almost 4 million children and over 5 million workers with disabilities.

The Supplemental Security Income (SSI) program is a means-tested Federal assistance program administered by SSA which falls within the jurisdiction of the Subcommittee on Human Resources. It provides a monthly benefit to people who have limited assets and income and who are blind, disabled, or aged 65 or older. In 2001, 6.6 million disabled and elderly Americans will receive over \$30 billion in Federal payments through the program. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (*P.L. 104-193*) required the Commissioner of Social Security to report annually to Congress on the status of the SSI program. In addition, P.L. 104-193 and related legislation included a number of changes in SSI law to address problems of fraud and abuse and control program growth.

In order to oversee and administer SSA's programs, SSA employs approximately 63,000 workers nationwide. Services are delivered through a decentralized nationwide network of regional offices, field offices, hearing offices, teleservice centers, processing and data operations centers, and State Disability Determination Services. This year, SSA's workloads include paying benefits to more than 50 million people every month, processing more than 6 million claims for benefits, issuing 16 million new and replacement Social Security numbers, posting 273 million earnings items to workers' earnings records, handling 59 million phone calls, and issuing 136 million Social Security Statements to workers.

The U.S. General Accounting Office, SSA's Office of Inspector General, and the bipartisan Social Security Advisory Board have each issued reports summarizing the primary management challenges facing the agency. These include: ensuring long-term solvency of the Social Security system, improving disability determination and return to work processes, further strengthening the integrity of the SSI program, providing timely and accurate service delivery as workloads rise and employee retirements increase due to the aging of the baby boom, maintaining a sound information technology infrastructure to support its operations, and addressing the misuse of the Social Security number.

In announcing the hearing, Chairman Shaw stated: "Social Security touches the lives of just about every American, providing essential income for workers and their families due to retirement, death, or disability. Social Security employees are among the best in Federal service. Yet the retirement of the baby boom generation will create unprecedented challenges for the agency. Chief among these is saving Social Security from bankruptcy. Second is the ability to deliver effective service and stewardship, as workloads rise 50 percent and more than half the agency's employees are eligible to retire in the coming decade. Equally important is fixing a broken disability determination and return to work process where workers with disabilities wait far too long to receive the benefits they deserve. Lastly, as we have seen in our numerous hearings on identity theft and from the tragic events of September 11th, safeguards to protect Social Security numbers must be enhanced."

Chairman Herger stated: "SSI provides a lifeline to the neediest aged and disabled Americans. It is our responsibility to ensure benefits reach those who need them and to protect both the beneficiaries and taxpayers from fraudulent payments and wasteful practices that threaten program integrity and public support for these essential benefits."

#### **FOCUS OF THE HEARING:**

The Subcommittees will examine the new Commissioner's vision and action priorities for the agency. In addition, the Subcommittees are particularly interested in hearing specific action recommendations from the invited witnesses who are leading stakeholders in the successful resolution of these challenges.

#### **DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:**

**Please Note:** Due to the change in House mail policy, any person or organization wishing to submit a written statement for the printed record of the hearing should send it electronically to [hearingclerks.waysandmeans@mail.house.gov](mailto:hearingclerks.waysandmeans@mail.house.gov), along with a fax copy to (202) 225-2610 by the close of business, Thursday, December 27, 2001. Those filing written statements who wish to have their statements distributed to the press and interested public at the hearing should deliver their 200 copies to the Subcommittee on Social Security in room B-316 Rayburn House Office Building, in an open and searchable package 48 hours before the hearing. The U.S. Capitol Police will refuse unopened and unsearchable deliveries to all House Office buildings.

#### **FORMATTING REQUIREMENTS:**

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record, or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. **Due to the change in House mail policy, all statements and any accompanying exhibits for printing must be submitted electronically to [hearingclerks.waysandmeans@mail.house.gov](mailto:hearingclerks.waysandmeans@mail.house.gov)**, along with a fax copy to (202) 225-2610, in Word-Perfect or MS Word format and **MUST NOT** exceed a total of 10 pages including attachments. Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers where the witness or the designated representative may be reached. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press, and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are available on the World Wide Web at <http://waysandmeans.house.gov>.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call (202) 225-1721 or (202) 226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

\* \* \* NOTICE—HEARING POSTPONEMENT \* \* \*

## ***ADVISORY***

FROM THE COMMITTEE ON WAYS AND MEANS

### **SUBCOMMITTEE ON SOCIAL SECURITY SUBCOMMITTEE ON HUMAN RESOURCES**

FOR IMMEDIATE RELEASE  
December 7, 2001  
No. SS-11-Revised

CONTACT: (202) 225-9263

### **Postponement of Joint Hearing on the Challenges Facing the New Commissioner of Social Security Thursday, December 13, 2001**

Congressman E. Clay Shaw, Jr. (R-FL), Chairman, Subcommittee on Social Security, and Congressman Wally Herger (R-CA), Chairman, Subcommittee on Human Resources, Committee on Ways and Means, today announced the Subcommittees' joint hearing on the challenges facing the new Commissioner of Social Security, previously scheduled for Thursday, December 13, 2001, at 10:00 a.m., in the main Committee hearing room, 1100 Longworth House Office Building, **has been postponed and will be rescheduled at a later date.**

\* \* \* NOTICE—HEARING RESCHEDULED \* \* \*

**ADVISORY**

FROM THE COMMITTEE ON WAYS AND MEANS

**SUBCOMMITTEE ON SOCIAL SECURITY  
SUBCOMMITTEE ON HUMAN RESOURCES**FOR IMMEDIATE RELEASE  
February 7, 2002  
No. SS-11-Revised #2

CONTACT: (202) 225-9263

**Rescheduled Joint Hearing on the  
Challenges Facing the New Commissioner  
Thursday, February 14, 2002**

Congressman E. Clay Shaw, Jr. (R-FL), Chairman, Subcommittee on Social Security, and Congressman Wally Herger (R-CA), Chairman, Subcommittee on Human Resources, Committee on Ways and Means, today announced the Subcommittees' joint hearing on the challenges facing the new Commissioner of Social Security, previously scheduled for Thursday, December 13, 2001, **will now be held on Thursday, February 14, 2002, at 10:00 a.m., in the main Committee hearing room, 1100 Longworth House Office Building.**

**DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:**

**Please Note:** Due to the change in House mail policy, any person or organization wishing to submit a written statement for the printed record of the hearing should send it electronically to *hearingclerks.waysandmeans@mail.house.gov*, along with a fax copy to 202/225-2610 by the close of business, Thursday, February 28, 2002. Those filing written statements who wish to have their statements distributed to the press and interested public at the hearing should deliver their 200 copies to the Social Security Subcommittee in room B-316 Rayburn House Office Building, in an open and searchable package 48 hours before the hearing. The U.S. Capitol Police will refuse unopened and unsearchable deliveries to all House Office Building.

All other details for the hearing remain the same. (See Subcommittees' press release No. SS-11, dated December 6, 2001.)

**FORMATTING REQUIREMENTS:**

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. Due to the change in House mail policy, all statements and any accompanying exhibits for printing must be submitted electronically to "*hearingclerks.waysandmeans@mail.house.gov*", along with a fax copy to 202/225-2610, in Word Perfect or MS Word format and **MUST NOT** exceed a total of 10 pages including attachments. Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers where the witness or the designated representative may be reached. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press, and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are available on the World Wide Web at <http://waysandmeans.house.gov>.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call (202) 225-1721 or (202) 226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

---

\* \* \* NOTICE—HEARING POSTPONEMENT \* \* \*

## ***ADVISORY***

FROM THE COMMITTEE ON WAYS AND MEANS

### **SUBCOMMITTEE ON SOCIAL SECURITY SUBCOMMITTEE ON HUMAN RESOURCES**

FOR IMMEDIATE RELEASE  
February 13, 2002  
No. SS-11-Revised #3

CONTACT: (202) 225-9263

### **Postponement of Joint Hearing on the Challenges Facing the New Commissioner of Social Security Thursday, February 14, 2002**

Congressman E. Clay Shaw, Jr. (R-FL), Chairman, Subcommittee on Social Security, and Congressman Wally Herger (R-CA), Chairman, Subcommittee on Human Resources, Committee on Ways and Means, today announced the Subcommittees' previously scheduled for Thursday, February 14, 2002, at 10:00 a.m., in the main Committee hearing room, 1100 Longworth House Office Building, has been postponed and will be rescheduled at a later date.

---

\* \* \* NOTICE—HEARING RESCHEDULED \* \* \*

# ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

## SUBCOMMITTEE ON SOCIAL SECURITY

FOR IMMEDIATE RELEASE  
April 24, 2002  
No. SS-11-Revised #4

CONTACT: (202) 225-9263

### Shaw Announces Rescheduled Hearing on the Challenges Facing the New Commissioner

Congressman E. Clay Shaw, Jr. (R-FL), Chairman, Subcommittee on Social Security of the Committee on Ways and Means, today announced that the Subcommittee hearing on Challenges Facing the New Commissioner of Social Security previously scheduled for February 14, 2002, will now **will take place on Thursday, May 2, 2002, at 9:30 a.m., in the main Committee hearing room, 1100 Longworth House Office Building.** The hearing will end no later than 12:00 p.m.

#### DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

**Please Note:** Due to the change in House mail policy, any person or organization wishing to submit a written statement for the printed record of the hearing should send it electronically to [hearingclerks.waysandmeans@mail.house.gov](mailto:hearingclerks.waysandmeans@mail.house.gov), along with a fax copy to (202) 225-2610, by the close of business, Thursday, May 16, 2002. Those filing written statements who wish to have their statements distributed to the press and interested public at the hearing should deliver their 200 copies to the Subcommittee on Social Security in room B-316 Rayburn House Office Building, in an open and searchable package 48 hours before the hearing. The U.S. Capitol Police will refuse sealed-packaged deliveries to all House Office Buildings.

All other details for the hearing remain the same. (See Subcommittees' press releases *No. SS-11*, dated December 6, 2001, and *No. SS-11-Revised #2*, dated February 7, 2002.)

#### FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. Due to the change in House mail policy, all statements and any accompanying exhibits for printing must be submitted electronically to [hearingclerks.waysandmeans@mail.house.gov](mailto:hearingclerks.waysandmeans@mail.house.gov), along with a fax copy to (202) 225-2610, in Word Perfect or MS Word format and MUST NOT exceed a total of 10 pages including attachments. Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. Any statements must include a list of all clients, persons, or organizations on whose behalf the witness appears. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers of each witness.

**Note:** All Committee advisories and news releases are available on the World Wide Web at <http://waysandmeans.house.gov>.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call (202) 225-1721 or (202) 226-3411 TTD/TTY in advance of the event (four business days notice is requested).

Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

\* \* \* NOTICE—CHANGE IN TIME AND LOCATION \* \* \*

## **ADVISORY**

FROM THE COMMITTEE ON WAYS AND MEANS

### **SUBCOMMITTEE ON SOCIAL SECURITY**

FOR IMMEDIATE RELEASE  
April 30, 2002  
No. SS-11-Revised #5

CONTACT: (202) 225-9263

### **Change in Time and Location for Subcommittee Hearing on Challenges Facing the New Commissioner of Social Security**

Congressman E. Clay Shaw, Jr. (R-FL), Chairman, Subcommittee on Social Security of the Committee on Ways and Means, today announced that the Subcommittee hearing on Challenges Facing the New Commissioner of Social Security scheduled for Thursday, May 2, 2002, at 9:30 a.m., in the main Committee hearing room, 1100 Longworth House Office Building, **will now be held at 9:00 a.m., in room B-318 Rayburn House Office Building. The hearing will end no later than 11:00 a.m.**

All other details for the hearing remain the same. (See Subcommittees' advisories Nos. SS-11, dated December 6, 2001; SS-11-Revised #2, dated February 7, 2002; and SS-11-Revised #4, dated April 24, 2002.)

Chairman SHAW. Good morning. Today our Committee will examine the challenges facing Commissioner of Social Security Jo Anne Barnhart. The Commission faces a monumental job of preparing the Social Security Administration (SSA) for the heavy responsibilities it faces in the coming decade, as the largest group ever of U.S. citizens turn from full-time workers into retirees. We will also hear from the public overseers of the Agency and from the representatives of those groups who receive the essential services Social Security provides.

As we already know, the challenges facing the Social Security Administration are many, from long-term financing, to service delivery, to stewardship, to disability process improvements to the operating budget. Each one of these issues presents unique challenges and requires strong and decisive leadership. This leadership rests not only with the Agency's executives, but also with us here in the Congress and with the cooperation of stakeholders both within and outside Social Security.

The Agency's future workload is daunting. It faces over a 50-percent increase in retirement and disability work at the same time it is scheduled to lose half of its seasoned workers to retirement. Adequate resources for the Agency is one of my top priorities, but

money without good management will not solve the overwhelming problems now beginning to break over the bow at Social Security.

I was pleased to learn that the Commissioner is doing a top-down assessment of the Agency and its future needs. With this assessment in hand, I am sure we can work with the Commissioner, on a bipartisan basis, in both the House and the Senate, to give her the support she needs. Hopefully, we can get together on one thing, and that would be it.

Certain issues of policy are also reaching a critical phase. Most important is securing Social Security's future for our children, our grandchildren, and generations to come. As Congress determines how best to strengthen this vital program, the importance of the Agency's assistance cannot be overstated. Also, drawing national attention is a disability claims process that simply does not work. In the delivery of services programwide, the need for better information and access through computer technology is one the public is quickly demanding from government.

Finally, the events of September 11, have highlighted the security threat to the United States from stolen Social Security numbers. The Agency, the Inspector General, and this Subcommittee have been aware of the rising tide of identity theft and its precarious effect on its victims. Now, because of the shocking revelations that many of the terrorists and possibly many of the co-conspirators in the September bombing held falsified Social Security numbers, the need to protect the integrity of these numbers has become a matter of homeland security.

Until we get this program under control, victims face financial ruin and our population lives in the shadow of another catastrophic event. We will act this year to further protect the privacy of Social Security numbers, and I will be calling on the Commissioner to help get this legislation passed.

I look forward to hearing from the testimony of each of our witnesses today, as we work together to ready the Social Security Administration for its challenges in the 21st century.

[The opening statement of Chairman Shaw follows:]

**Opening Statement of the Hon. E. Clay Shaw, Jr., a Representative in Congress from the State of Florida, and Chairman, Subcommittee on Social Security**

Today, we have the opportunity to welcome the new Commissioner of Social Security, Jo Anne B. Barnhart. Mrs. Barnhart is our 14th Commissioner of Social Security and only the second Commissioner to be sworn in since the Social Security Administration became an independent agency in 1995. We appreciate having her appear before our Committee, and look forward to hearing her articulate her vision for the agency and outline her action priorities.

As you know, the Social Security Administration (SSA) was established to provide an economic safety net against loss of income due to retirement, death or disability. For almost two-thirds of a century, SSA has successfully succeeded in reducing the poverty rate among the nation's elderly by 62 percent in 30 years.

In addition to providing a retirement safety net, SSA administers two disability programs—Disability Insurance and Supplemental Security Income—which seeks to provide an economic safety net for workers who become disabled. The disability programs along with the Social Security trust fund face major solvency challenges as the baby boom generation begins to age and places demands on Social Security's services. Moreover, SSA's own workforce is facing retirement of approximately half of its employees due to retirement further complicating the predicted future demands on service delivery.

The General Accounting Office (GAO), SSA's Office of Inspector General and the bipartisan Social Security Advisory Board have each issued reports summarizing their views on the primary management challenges facing the agency. Their primary concerns address the areas of solvency, disability determination and return to work processing and misuse of the Social Security number. Our Subcommittee has held many hearings examining these issues and their challenges, and we will continue to do so.

Never before has a Commissioner of Social Security faced more challenges ranging from economic to workforce issues. We must waste no time in addressing these program concerns if we are to ensure their solvency and continuation for current and future generations.

---

Chairman SHAW. Mr. Matsui?

Mr. MATSUI. Thank you very much.

Thank you very much, Mr. Chairman, for holding this hearing. I think this hearing, along with a few others, is probably one of the most important hearings that we, as Members of Congress, will have because obviously the results of what Commissioner Barnhart and her staff will be doing over the next few years will have a tremendous impact on each American, and so I appreciate your holding this hearing, and certainly I appreciate Commissioner Barnhart's appearance here today.

I might just say that I worked with the Commissioner when she was in the Bush Administration, Bush 1 Administration, and I really enjoyed that relationship, and I look forward to your tenure as the Commissioner of Social Security. I appreciate the fact that you are here again today.

I might, Mr. Chairman, if I may just take a moment to point out that Hal Daub, a colleague of ours, formerly on the Committee on Ways and Means, from Nebraska, will be testifying on the second panel today. I just want to welcome him here today. I think we came in together, if I am not mistaken. Maybe you came in 2 years later.

Chairman SHAW. He came in 1980.

Mr. MATSUI. Okay, 1980.

Chairman SHAW. We also have Barbara Kennelly, another former Member of the Committee on Ways and Means.

Mr. MATSUI. Representative Kennelly is here as well. She just came in, and she just got a new job with the National Committee to Preserve Social Security and Medicare, and we obviously look forward to working with her.

Mr. Chairman, what you have said is absolutely correct, in terms of the issue of the fact that over the next few years 40 million new Americans will go on the Social Security rolls. That will not only create more work for the system, but also probably create more disability claims as well and at a time when we have an increase in the volume of processing of claims, at the same time, in the 1980s, the budget constraints required us to reduce the workload in the Social Security Administration. So, now we have come to a point where we are going to have to make some critical decisions over the next few years. So, we look forward to finding out how we are going to be able to achieve that.

I might also thank Commissioner Barnhart for her work on the service delivery assessment issue. I know that she has some preliminary numbers that she will give us today, and certainly we look forward to working with her on that issue.

So thank you again, Mr. Chairman.  
Chairman SHAW. Thank you, Mr. Matsui.

Ms. Barnhart, welcome back to this Committee. This is your second time before us. You, as all of the witnesses, proceed as you see fit. Your entire statement, without objection, and the statements of all of the witnesses will be placed in the record.

**STATEMENT OF THE HON. JO ANNE B. BARNHART,  
COMMISSIONER, SOCIAL SECURITY ADMINISTRATION**

Ms. BARNHART. Thank you, Mr. Chairman, and Mr. Matsui. I really appreciate this opportunity to be here today. It is very important to talk about the challenges facing the Social Security Administration because, as you both indicated in your opening statements, they are many, and they are critically important.

In my written testimony that I have submitted for the record, I go into some detail outlining what I consider to be the four basic and major challenges for the Agency.

First of all, providing service, adequate and good service to the American people, particularly as baby boomers age and move into the retirement and disability population, improving program integrity through sound fiscal management and stewardship, insuring financial solvency and sustaining that solvency for future generations, and maintaining the quality of staff that SSA needs to meet those goals. As you mentioned, Mr. Chairman, we are expecting and projecting roughly one-half of our employees will retire over the next few years. I call these four challenges the four S's: service, stewardship, staffing, and solvency.

I would like to use the remainder of my time this morning not to read that statement, however, but rather to talk about the disability program which, as you know, is perhaps the most challenging and the most pressing issue that the Agency faces. As Mr. Matsui indicated in his opening remarks, I have been working on a service delivery assessment and budget which I promised to Chairman Baucus during my confirmation and in conversations with each of you shortly after being confirmed by the Senate.

I would like to take this opportunity to summarize the findings that I have—

Chairman SHAW. Excuse me. Are these people with you?

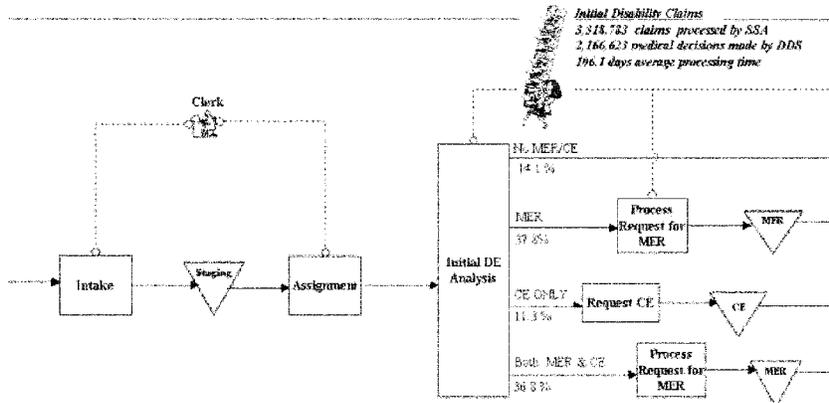
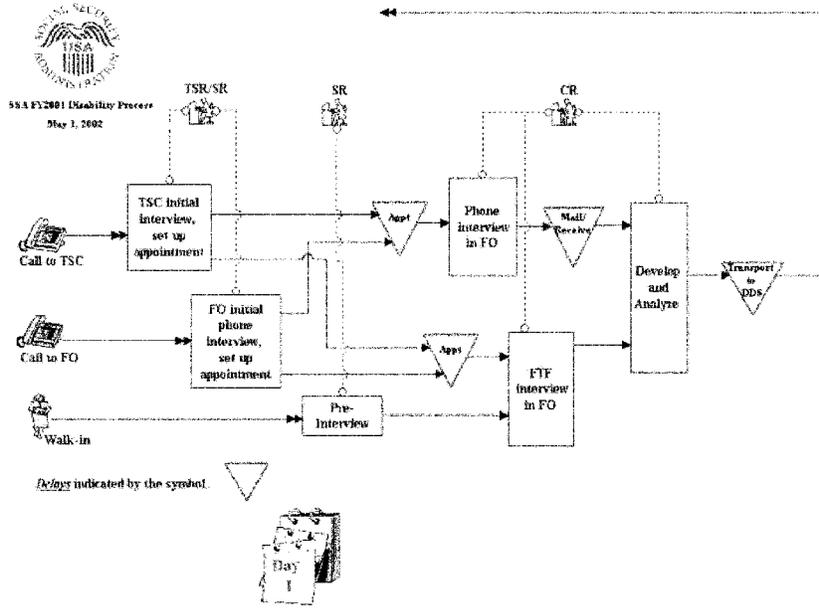
Ms. BARNHART. Yes, they are.

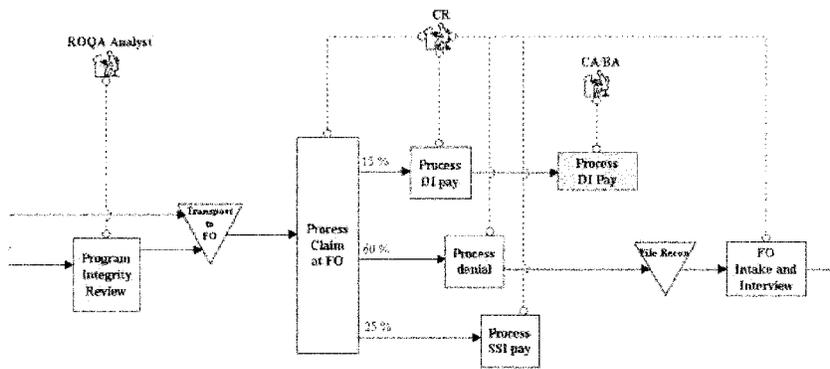
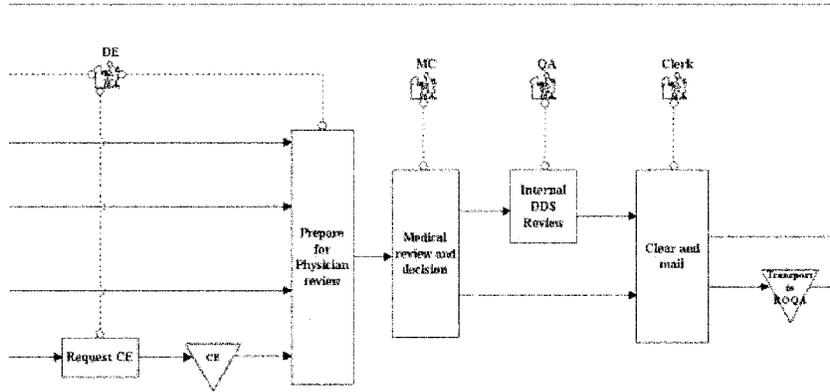
[Laughter.]

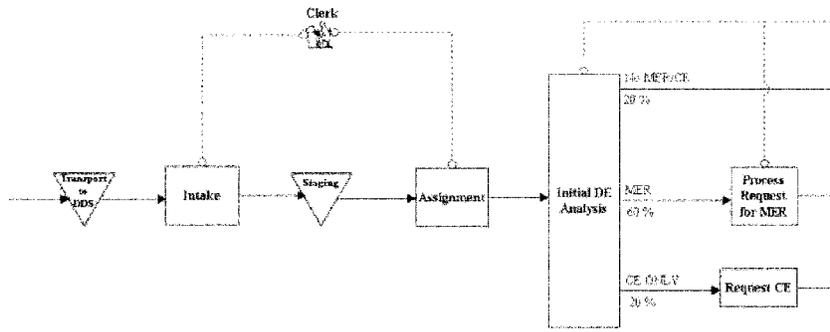
Ms. BARNHART. In the interest of time, I had given them a verbal cue so they would know when to come up so we wouldn't waste any of the Committee's time.

I am going to summarize the findings to date, and time doesn't permit a complete technical explanation of this chart before you, but I wanted you to see it because it is going to provide the framework for the comments I want to make about the disability program today. We have provided to each of you, in blue binders, segmented copies on 8½ by 11 pieces of paper.

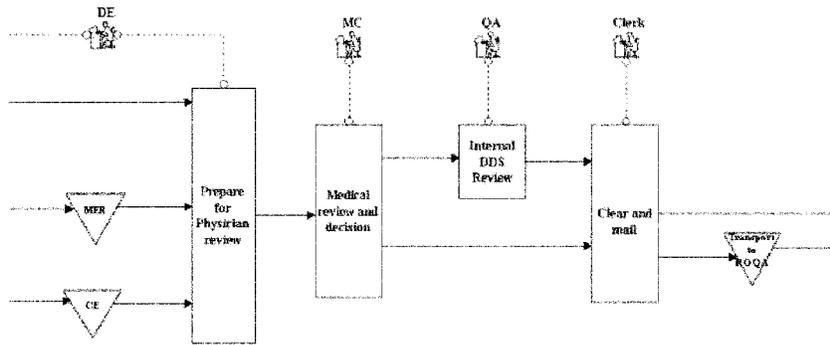
[The charts follow:]

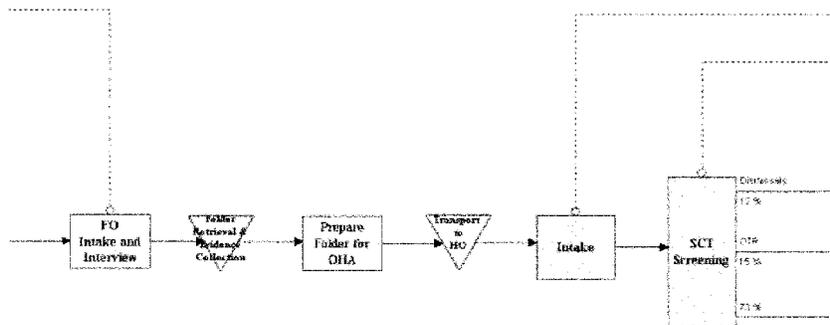
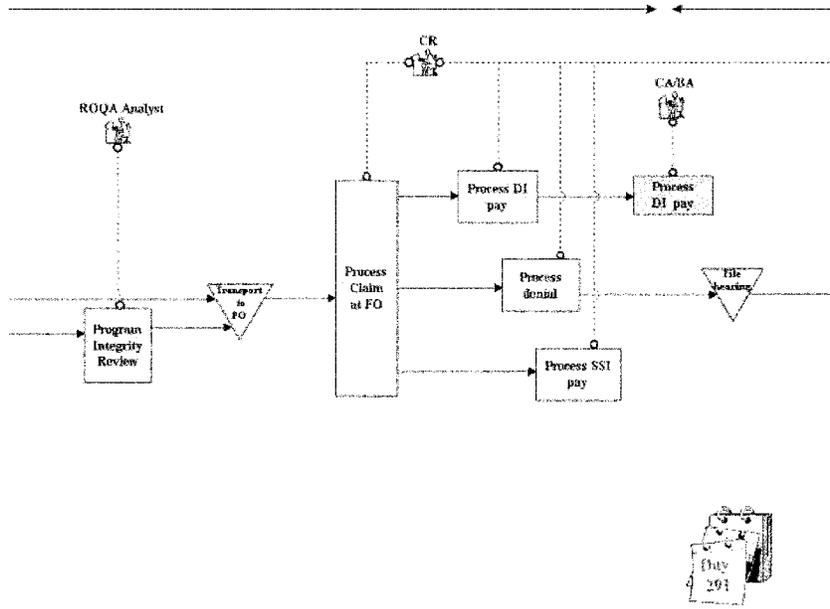


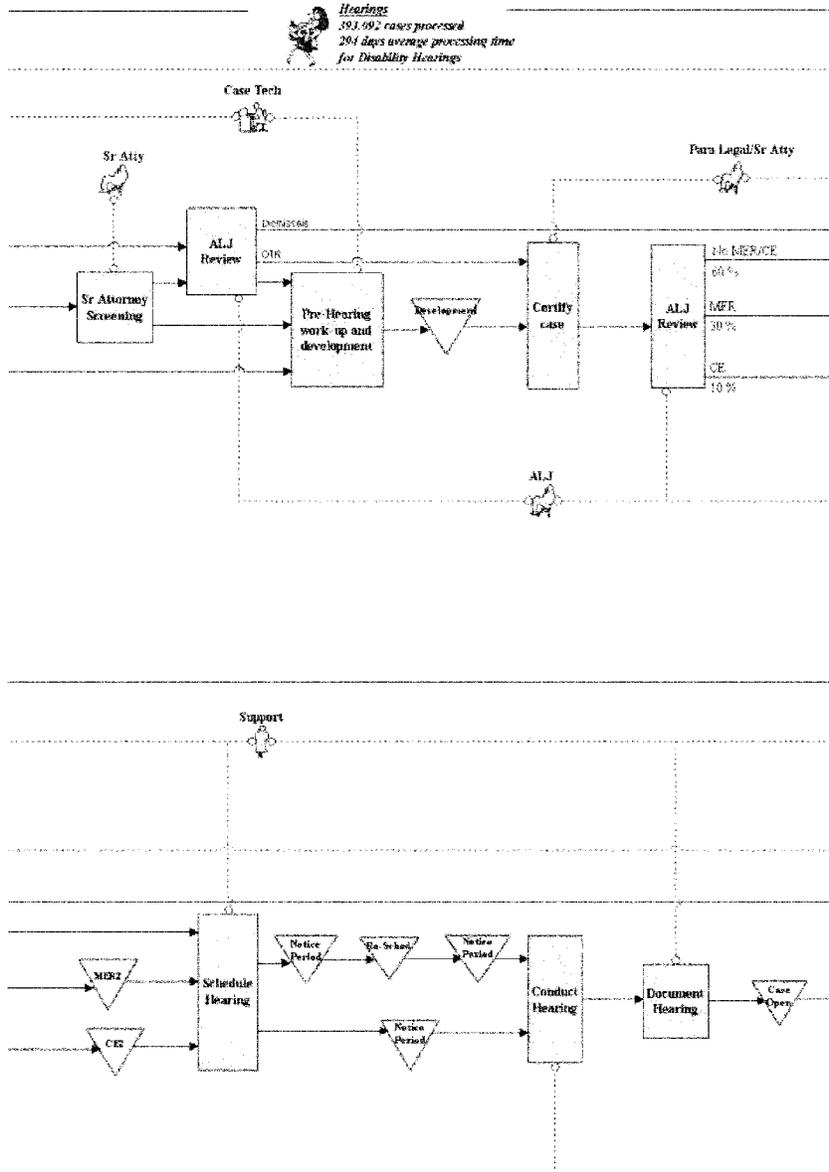


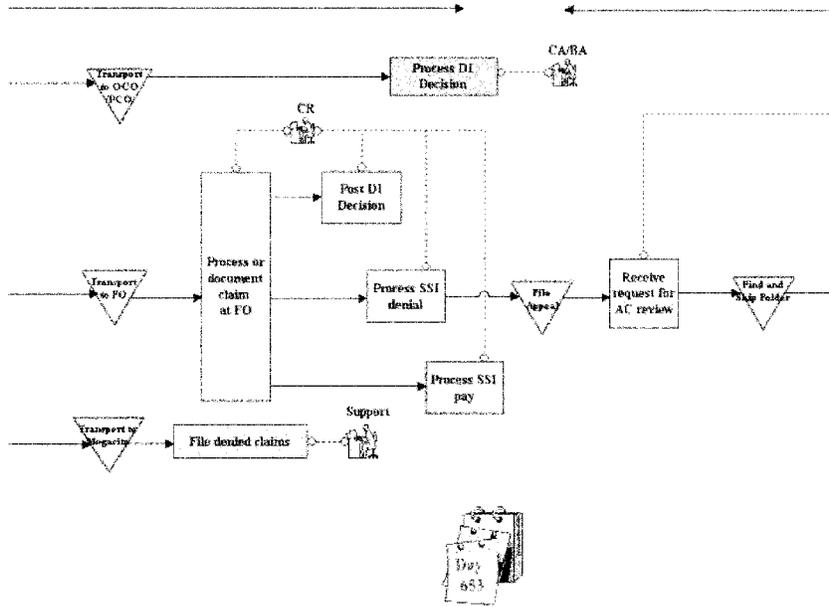
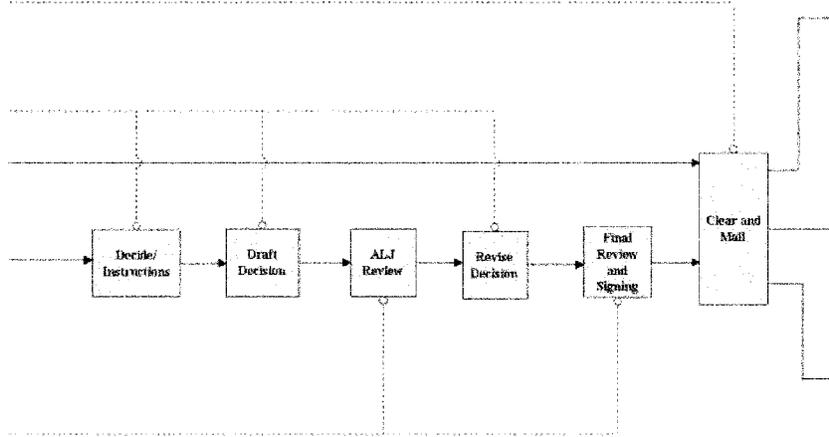


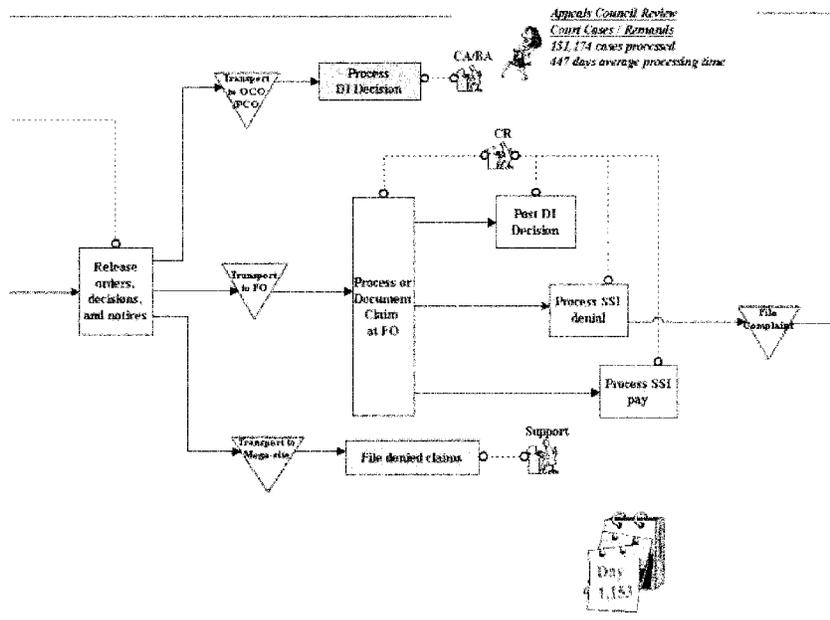
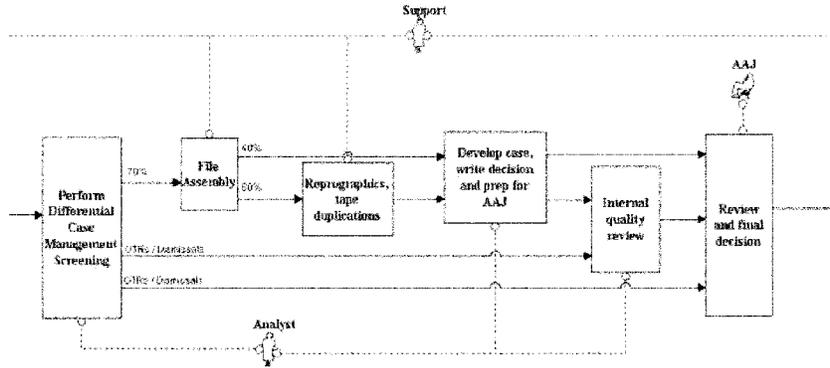
*Reconsiderations*  
 722,557 cases processed by SSA  
 538,702 medical decisions made by DDS  
 94.6 days average processing time (does not include T16 processing time)

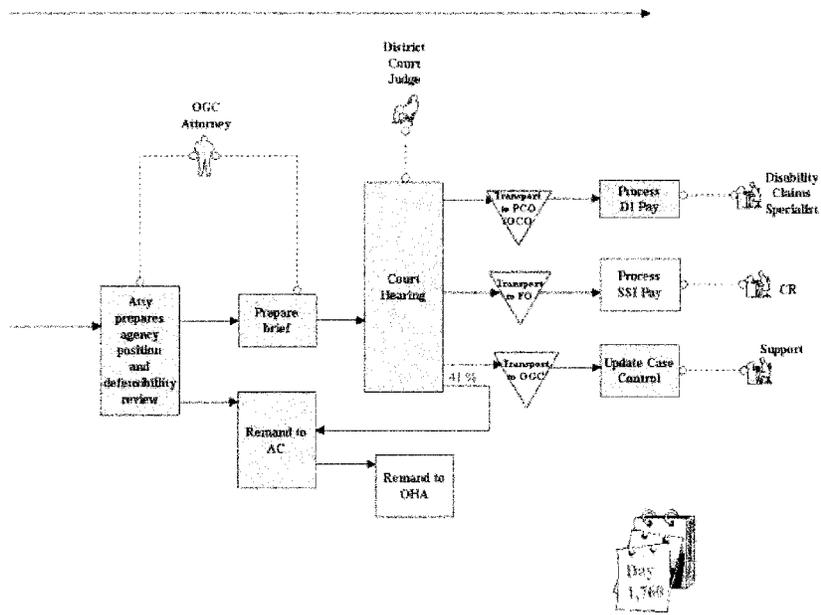
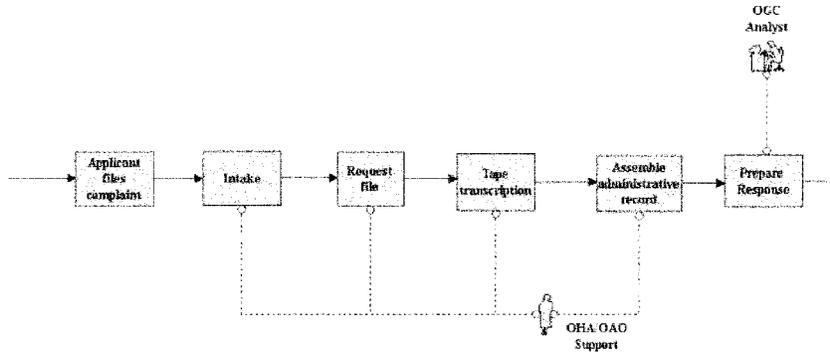






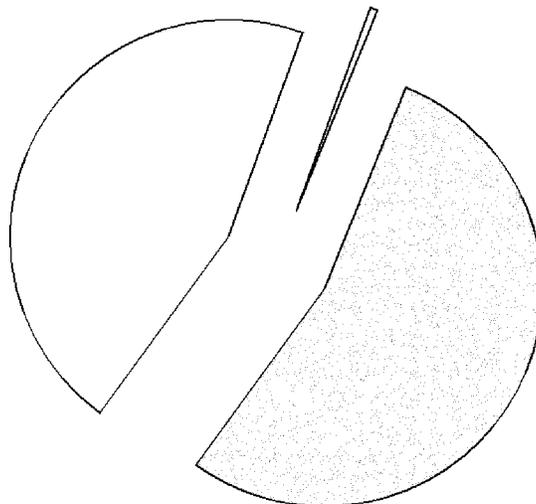






**DISABILITY PROCESS TIME SUMMARY THROUGH THE  
APPEALS COUNCIL FROM THE CLAIMANT'S PERSPECTIVE**

Less than 1% (7 Days)|  
Task Time



1,153 Days Total

The Pie Chart above shows the three components of time reflected on the Disability Process Flowchart. The following assumptions are made:

- The claimant pursued the claim all the way through the Appeals Council and was denied at each step.
- No internal DDS reviews or ROQA reviews were conducted.
- MER and CE were requested at the initial claim, reconsideration, and hearing level.
- The hearing was not rescheduled.
- Process Time = Task Time + Delay Time + Queue Time
- Task Time is based on average task (hands on) times.
- Delay Time is time largely beyond SSA control such as MER/CE time, 60-day appeal period, and so forth.
- Queue Time is "in-box" time (more resources would decrease queue time).

Ms. BARNHART. Let me say, I did not intend to walk through this chart. We have already done so with members of your staffs earlier this week, but my staff would be happy to come up and brief you or your staff, as you would desire, in the future. A thorough briefing takes somewhere on the order of 2 hours, so we don't have time for that this morning.

This chart shows what happens from the moment someone contacts Social Security. On that far left-hand side, they can contact us by calling the 800-number, calling the field office, or walking

into a field office. The chart goes on to show what happens to what would be the average worst-case situation, and by that I mean someone who is denied at every stage of the system and goes all the way through the Federal court system, which is the gray at that far end.

For Social Security's purposes, technically our responsibility and our process ends at that moment, the blue area there. The chart is color coded. The blue represents the field offices, this green the State Disability Determination Service (DDS) agencies. I am sitting in front of the Office of Hearings and Appeals (OHA). The yellow is the Appeals Council, and as I said, the gray is the court. We did that because it is important to understand the hand-off of the cases and the back-and-forth that occurs because that accounts for some of the processing time delays that we experience.

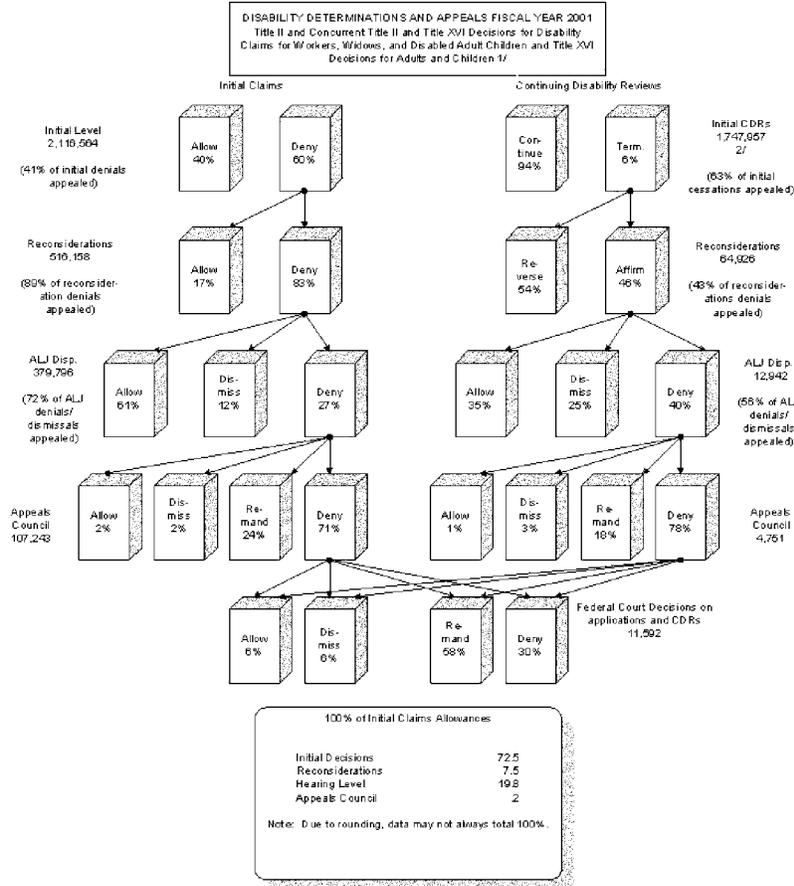
You will also notice, and again I am not going to go into the specifics, but there are actually little deltas, red triangles throughout this process. What they represent are the points in the process that we have identified where there are delays, where backlogs start to happen, bottlenecks occur, areas that we need to look at specifically to make improvements. The improvements that we are looking at and developing at this point fall into different categories. There are those that are under our immediate control, things that I have the authority to change, based on operating systems within the Agency.

There are also internal policies we have that can be changed by the Social Security Administration and regulations, noncontroversial regulations, that can improve the processing and the program. Beyond that, we will eventually look into the longer term policy issues related to the program because I believe that one of the things that has come through clearly is that the issues that create such a very lengthy process and complicated process are a combination, in fact, of all of those factors.

Now, along the bottom here, you see calendars, little calendars, and what those represent are the length of time that it takes to get to that point in the process. For the average case, in the year 2001—we used 2001 because that was the last year for which we had complete data by the time the person moves into the Office of Hearings and Appeals, they are on day 291. By the time they get out of the Office of Hearings and Appeals, they are at day 653, and by the time they get through the Appeals Council they are at day 1,153.

Now, again, I want to emphasize approximately 40 percent of the millions of people who apply for disability each year are decided favorably at the DDS level. There is what we call a waterfall. Of the 60 percent that are not approved at the point of entry, a percentage of those, 41 percent, go to the next level, and so on and so forth. I would be happy to provide a waterfall, I am sure your staff has it, but we would be happy to provide our most recent so-called waterfall chart for you for the record.

[The chart follows:]



1/ Includes all Title II and Title XVI disability determinations. The data relates to workloads processed (but not necessarily received) in fiscal year 2001, i.e., the cases processed at each adjudicative level may include cases received at one or more of the lower adjudicative levels prior to FY 2001.  
 2/ Includes non-State CDR mailer contributions. Also includes 31,714 CDRs where there was "no decision." The continuation and termination rates are computed without the "no decision" cases.

Source: Office of Disability, March 2002

The people that you hear about, the people that we hear about, that we read about, the sad, sad cases of individuals who have disabilities and who ultimately are determined favorable at the end of this process, right now they are waiting 1,153 days. I want to acknowledge, first of all, the employees of Social Security and the DDS do an outstanding job. They are dealing with huge numbers of people. They work very hard. They are a dedicated workforce and, in no way, am I suggesting anything other than that. I am simply saying that, unfortunately, I believe the cases that we hear about that demand our attention are the so-called outlier cases, the cases that do go all the way through to that level.

With that said, they can put the chart down, but I think it provides a very important framework as we talk about this issue.

Thank you very much, everyone.

These are the folks, by the way, who put this chart together, by and large. It took a lot of work to do that. They work with people throughout the Agency at every level, and many of them are from our field, which is very, very important.

This is what I call the toothpick chart. If you look at this chart, the entire circle represents the 1,153 days, which was again the time from the point of entry through the Appeals Council. I should mention, by the way, if the case goes on to court, it adds another 18 months to the process. So, we are talking 5 years if the case goes through the court system.

Back to this chart. If you look at this chart the yellow area that is called Queue Time, 525 days, we have associated that amount of time in the process with backlogs. The way we calculate backlogs in the Agency is we determine how many cases we need to have in the so-called pipeline. Basing that on ideal service, processing cases at the DDS in 63 days, we need to have 400,000 cases in the pipeline. Processing cases at OHA in 208 days, we need to have 300,000 cases in the pipeline.

We then take what our pendings are, subtract that pipeline number from it, and get the backlog. The backlog now takes 525 days in that process. So, in other words, there are cases that are waiting 525 days simply because of all of the cases in front of them.

The delay time, the blue area, that is the area that we are looking at specifically for improvements. Of that 621 days, some of it we really do not have any control over, and I am not sure we would want to change anyway. For example, throughout this process, and included in that 1,153 days, are three different periods of 60 days where claimants have the ability to request the next step of appeal. There are also some other notification requirements: the number of days we have to provide when we schedule a hearing for them so they know the hearing is I think that is 20 days. After the hearing, we leave the record open for 22 days so that the claimant can submit even further evidence, medical evidence or information for the file.

So, all of those due process days are included in that as well. That accounts for somewhere around 200 of the days in the 621. I could provide this for the record. We, in fact, did explain to your staff when we briefed them earlier this week, a complete accounting of the 621 days.

[The information follows:]

The 621 days displayed as "Delay Time" on the chart assumes that the applicant is denied at each stage of SSA's adjudicative process, appeals at each of the three opportunities, and thus goes through SSA's entire administrative process. The times are estimated averages. Approximately one third of the delay time is attributable to legal requirements. This includes 180 days to allow for the statutorily set time for filing appeals (60 days each). Another 20 days is included for the legal notification requirement once a hearing is scheduled. Roughly another third of the delay time occurs in securing the information needed to make the disability determination. This includes over 180 days spent securing medical evidence of record and consultative examination evidence at the initial, reconsideration and hearing levels and another 22 days after a hearing during which a claimant or representative may submit additional evidence. The remaining third of the delay time is comprised of 21 days between the initial call to SSA and an appointment to file an application, over 40 days mailing the file between offices, almost 60 days locating the file, and about 80 days preparing the file for a hearing judge.

---

Of those days, also, 40 days are lost due to mail time, a folder being mailed back and forth from the DDS to the field office or that field office to OHA or that hearing office and so forth. Approximately, 60 days are spent finding the folder. Actually, I think we calculated 56, but I am kind of rounding everything off. So, when you get the materials from us, you will see that actually the numbers vary a little bit. You can imagine, with millions of claims and hundreds of thousands of cases moving through this system on a regular basis, it becomes a real challenge when the folder is going back and forth between those different offices to locate the folder in a timely fashion. In fact, we have issues in the court system, where our attorneys are being held in contempt of court because we are unable to find the files within the time frame that the judge sets the case.

So, those are things, quite frankly, we obviously can address. We are looking at things like should we be using some kind of expedited mail system, in the immediate term, as opposed to just the U.S. mail? Should we be using Express Mail, should we be using UPS, should we be using FedEx and what are the costs of those kinds of things?

This chart, and the mapping out of this process has been an evolving effort with the entire Agency working together to provide the information. What it led to was a realization, on the part of myself and my senior staff, some of the Deputy Commissioners in the Agency, that we really must move toward an electronic disability process. We really must have an electronic file. We could eliminate the lost folder question because there would be an electronic copy of the file.

We can virtually eliminate the mail issues because people would have access to the files through the system. Right there you would have 100 days that you could pick up of this 621. So, that is the kind of analysis that we are doing. I mention that simply as an example, not to go through all of the things that we are looking at, but just for exemplary purposes.

It is a very complicated process. We are looking at it, as I say, from all levels, to take immediate action, mid-term action, what I call mid-term action, and what I call long-term action. When you look at this chart and you see that of the 1,153 days, the actual hands-on time working the case is 7 days of the 1,153 days, I think it is a striking symbol of the fact that we need to change the entire dynamics of that circle. It needs to become a pie chart. That toothpick needs to certainly at least move out to a wedge of pie, and we need to change the configuration of the circle from the standpoint of the total number of days that we are looking at.

I have included in my testimony some of the decisions that I have made to date in both the hearing process, as well as the initial claims process. We are in the process now of beginning to bargain with the union on impact and implementation of those. So, many of them have not gone into effect yet, but I would be happy to discuss those initiatives where I have made decisions already or to answer any questions that you might have.

Again, I just want to thank you very much for giving me this opportunity to discuss the disability program and other challenges this Agency faces.

[The prepared statement of Ms. Barnhart follows:]

**Statement of the Hon. Jo Anne B. Barnhart, Commissioner, Social Security Administration**

Chairman Shaw, Representative Matsui and Members of the Subcommittee:

I am pleased to be here today in my second appearance before you as the Commissioner of Social Security to discuss the challenges facing the Social Security Administration (SSA). For all of the people who depend on Social Security and Supplemental Security Income (SSI), the work we do matters greatly. We must provide the kind of service that each and every claimant, beneficiary, and citizen needs and deserves.

I also want to thank you for holding this hearing at this time, because it gives me the chance to discuss with you the wide range of important issues facing Social Security early in my tenure. I've been Commissioner just over five months now. When I think of the things I want the agency to accomplish during my watch, it seems like the time has flown by. I look forward to working with you and all the members of the Subcommittee, as well as the experienced and dedicated employees at SSA.

Today, Social Security faces great challenges: Giving the American people the service they deserve, particularly as the number of beneficiaries increases each year with the aging of the baby boomers; improving program integrity through sound fiscal stewardship; ensuring the program's financial solvency for future generations; and maintaining the quality staff SSA needs to meet these goals. I think of these challenges as the four S's: service, stewardship, staffing and solvency.

**Service**

The Social Security Administration's programs touch almost every person in the nation in one way or another—whether to get a social security number, contribute through payroll taxes, apply for retirement or survivors benefits, or apply for disability benefits. And, generally, the agency does a good job of providing the kind of service people need, but there are other areas where we must improve. The most glaring of these areas is the disability process.

I know everyone is concerned about the length of time the disability process takes. Quite frankly, I think the length of time the disability claims process can take is unacceptable.

Over the last five years, through my work as a member of the Social Security Advisory Board and now as Commissioner, I have had the opportunity to visit SSA field offices, hearing offices, and State Disability Determination Services (DDS). For the past 5 months I have spent a lot of time getting different perspectives on the disability process. I have talked to many people—employees and the public, individually, in small and large groups, to hear about the concerns they have with the disability process, at both the initial and appeals levels.

In the weeks leading up to my confirmation, I was often asked what additional resources would be required to get control over the delays in the disability process, and address other areas of concern. I said that I could not answer that question until I could analyze our current processes, determine the optimal levels of service from the point of view of both applicants and taxpayers—future applicants, and what was necessary to get us there.

At my confirmation hearing before the Senate Finance Committee, Chairman Baucus and I discussed my plan to develop a service delivery budget, and I promised him that I would report back.

As I mentioned, it is clear that the disability process takes too long.

Let me also say that I am not waiting to take steps to improve the disability process where we can take action now. I feel very strongly that we must move forward now and make decisions on what we can do immediately to improve disability processing while laying the groundwork for additional mid- and longer-term improvements.

For instance, SSA's prototype process has been in place in 10 States since 1999. In December, I issued a Federal Register notice that the prototype would continue for six more months. That gave us time to evaluate the prototype, to see what works and what does not. Now is the time to make decisions and put them into effect nationwide.

For instance, the prototype confirmed the value of the single decisionmaker (SDM) feature. This feature allows the claims examiner to make the determination without a mandatory physician sign-off on many claims (except for determinations for children and those with mental impairments) and relies on the examiner to decide when to seek consultant physician advice on difficult and complex claims. It lets the

DDS make more effective use of examiner and medical consultant resources and provide faster determinations for some claimants. I have decided to put the SDM into practice now, so that all States can take advantage of it, as we continue to develop longer-term improvements.

I have also decided not to extend the formal claimant conference feature of the prototype. This end of the line conference between claimant and examiner added processing time (an estimated 15 to 20 days) and was not as effective as we had hoped in helping claimants understand claims issues. Most prototype States found early and ongoing contact with the claimant to be more effective.

There have also been concerns that the Hearings Process Improvement project (HPI) has created even more bottlenecks in the process than it was intended to fix. In addition, SSA's past inability to hire Administrative Law Judges (ALJs) to make decisions at the hearing level of the disability process has had a profoundly adverse effect on our ability to provide timely service. Before I signed on, former Acting Commissioner Larry Massanari started a group looking at the hearing process. Thanks to their careful analysis and that of my own staff, I have made some additional decisions on short- and near-term changes in this area. We are required to bargain with employee unions before we can implement some of these changes, and we certainly intend to meet that obligation in good faith. The decisions include:

- Including ALJs in early screening for on-the-record decisions;
- Developing a short form for fully favorable decisions;
- Allowing ALJs to issue decisions from the bench immediately after a hearing;
- Creating a law clerk position;
- Expanding videoteleconference hearings;
- Deploying speech recognition technology;
- Ending the hearing office technician rotation requirement; and
- Digitally recording hearings.

More needs to be done and we are continuing to work in this area, but these are important first steps. I also have some good news to report with regard to hiring ALJs. In October we were able to bring on board 126 new ALJs from a list of candidates that had been (and continues to be) the subject of litigation. I want to thank the Social Security Subcommittee for your interest in hiring the new judges, and hope that we can continue to rely on your support.

One thing that has become clear is the need to accelerate implementation of what we call e-DIB, an electronic disability determination folder. This should organize, store, transmit, and track claimant files and medical evidence electronically. I have formed a committee of the deputy commissioners of the 3 offices most closely involved with this. We have a plan in place to have this process up and running in another 20 months. This will go a long way to speeding up the process.

### **Staffing**

As you are aware, many of SSA's employees are retirement-eligible and many more will become eligible over the next few years. We need to explore ways both to retain employees who may be eligible for retirement and recruit employees as they first enter the workforce. I believe part of that effort must be to reinforce the idea that pursuing a career in the Federal Government is a noble and worthy cause. We can even look creatively at this challenge as an opportunity for employment of our own SSI and SSDI recipients.

Over the years, SSA has earned a well-deserved reputation as an agency with a "can-do" attitude as it has taken on new responsibilities, developed new technologies, and worked hard to meet increasing workloads. With the support of talented and dedicated employees, I believe that we can make service improvements at this time within our available resources, and that we can improve the efficiency of our processes as we fulfill our legislatively mandated duties.

### **Stewardship and Program Integrity**

I mentioned earlier the importance of good stewardship, but I'd like to elaborate a little bit on this theme. Providing true service to the public includes an obligation to ensure sound financial management. The people of America, who fund the Social Security program through their payroll tax contributions, and SSI through their income tax payments expect and deserve well managed programs. There is also a strong economic incentive for doing so. In several areas, such as SSA's continuing disability reviews, ensuring that disability beneficiaries still meet eligibility criteria can reap significant savings.

But good stewardship involves more than money. The tragic events of September 11, and reports that some of the terrorists had Social Security numbers and cards,

which may have been fraudulently obtained, have brought home the need to strengthen safeguards in our enumeration process. In response to those events, SSA formed a high-level response team, which includes participation from our Office of the Inspector General (IG), and from the New York and San Francisco Regions. We have already begun implementing a number of process improvements to help ensure that we are strengthening our capability to prevent those with criminal intent from using Social Security numbers and cards to advance their operations.

In all program integrity areas, not simply identity fraud and enumeration but also in our efforts to improve our stewardship of the SSI program, I am looking forward to working with SSA's Inspector General. As a matter of fact, I met with the Inspector General during my first days in office to begin a review of his recommendations. And Deputy Commissioner Jim Lockhart and I met with the Comptroller General recently to discuss the SSI program's high risk designation and develop a plan for removing the designation from the SSI program. I have asked Mr. Lockhart to take the lead on this important initiative.

With regard to September 11, although it has been several months since the terrorist attacks, I want to take this opportunity to express my pride in the response of SSA's employees to the terrorist attacks. Particularly in New York, but also in northern Virginia and throughout the country, they worked tirelessly to help those who lost family members in spite of the chaos and highly charged emotions of those first few days. They will always have my gratitude and respect for their quick and compassionate action.

#### **Solvency**

Whatever their individual circumstances, the vast majority of Americans will at some point in their lives be touched by Social Security. By providing survivor benefits to children and spouses, disability benefits, retirement benefits, and SSI benefits, SSA's programs reach almost every single home. And for the millions of Americans currently receiving benefits, be it a supplement to retirement or critically needed income support, and for those who will become eligible in the future, we must make sure that we can offer the same assurances in the future.

During my tenure as a member of the Social Security Advisory Board, one of the issues on which we pressed for action is to ensure the long-term solvency and sustainability of Social Security. The combined assets of the Old-Age and Survivors and Disability Insurance Trust Funds are estimated to reach cash flow deficit in 2017 and become exhausted in 2041 according to the latest report of the Social Security Trustees. I believe it is important to act as far in advance of that time as possible to make necessary changes to the program.

I also believe that the impetus for constructive improvements must come from a bipartisan consensus. While I am not an economist, as Commissioner I will work to help reach that consensus. The final report of the President's Commission to Strengthen Social Security is the beginning of public discussion to work toward that goal.

#### **Conclusion**

In conclusion, Mr. Chairman, I did not assume my duties as Commissioner of Social Security in order to manage the status quo. Through my work on the Social Security Advisory Board, I am convinced that we can and must do better. In doing so, I will work within the Administration, with the Congress, and with the dedicated and experienced employees of the Social Security Administration to find the best solutions.

Again, thank you for inviting me to be here today. As you know, in order to meet the challenges I've described, and others, we will also need the help and advice of the Congress, and your continued support to obtain the needed funding for our operations. I look forward to working with you to make Social Security's programs—especially disability—more responsive to claimants and beneficiaries and more accountable to the nation's taxpayers.

---

Chairman SHAW. Thank you for a very fine presentation. I must say a very unusual chart.

[Laughter.]

Chairman SHAW. I have got a couple of questions; one with regard to the retiring employees and how that would be impacted by the introduction of electronic filing and electronic handling of these

entire matters. How much personnel time or how many employees would this be able to replace?

Second, I want to inquire, too, as to what exactly are you doing to phase-out maybe early retirement of some of these employees so that you are not being impacted all at once with new hires?

Ms. BARNHART. Well, first of all, if I may say, Mr. Chairman, in terms of electronic disability, I wasn't looking at it as a way to reduce employees. I was looking at it as a way to improve service and to allow our employees—

Chairman SHAW. So you don't see it having any material effect on the—

Ms. BARNHART. Well, I think there will absolutely be gains. That is something we actually have just started looking at, in terms of trying to do the cost-benefit analysis of it. There are different methodologies for looking at that. I was just talking about that earlier this week, in fact, a very timely question, in terms of the dollar savings to the program, as well as the so-called intangible cost-benefit to the program.

What I would appreciate is having the opportunity, after we have completed that analysis, to provide that information to you, but I was looking at it more from a service perspective. Right now, what we have is we have employees who are more senior employees who, unfortunately, have to spend time looking for folders, and Xeroxing files and things like that, and that simply is not a good use of their time. I am really much more interested in having individuals doing more of the so-called grade-controlling portion of their position descriptions than engaging in lower level work.

With relation to your question about retiring employees, it is correct that over the next 10 years we expect approximately 3,500 people to retire each year. We have actually used early out and, in fact, are running early out right now in the Agency, with the exception of administrative law judges (ALJ). We use that to deal with that retirement peak. We have an Agency where the average age is 47. I must say it is the first time I have worked anywhere where I have been over the average age, and it is a daunting thing.

Based on projections, we would have lost a huge number of our employees all in a couple of years had we not used early out. By using early out, what it has allowed us to do is to flatten the wave. So, in other words, we didn't have a huge number retiring all at once, and we had approximately a couple of thousand people take early out every year, which has allowed us now to back-fill those jobs and start training the people, so that by the time other people retire, we have more trained employees ready to take their place.

I must emphasize the work that the Social Security employees do is very complicated work at many of the levels, and it takes, I am told, anywhere from 1½ to 2 years to become fully trained to be able to perform the responsibilities of a claims representative, for example, a position most people are familiar with.

So, it is very, very important, this whole idea of bringing people in, on an ongoing basis, to train them and flattening that retirement wave so that we are not all of a sudden in a year or two losing a huge number of employees.

So, we are monitoring it, but we intend to continue to use the early out process.

Chairman SHAW. Are you preparing a budget to bring back to us to take a look at with regard to the electronics and operating technology at Social Security?

Ms. BARNHART. In our budget submission, we included information about our Information Technology (IT) activities. To be perfectly honest, I wasn't working on a separate budget on IT. I do, however, have a team of three deputies that are working on electronic disability. One of the things I would like to take this opportunity to mention is, when I came into the Agency and asked about electronic disability, I was told we would have it in 7 years. I told them that that would not do because my term is only 5 years, and I would like to enjoy it for at least a year before I leave.

So I asked, if resources were not an issue, if you did not have to worry about resources, how quickly could we have electronic disability? Our Deputy Commissioner for Systems came back to me and said we could have it in 22 months. That was 22 months from March 1. Now, when he told me that, some of the other people on the staff said did you clarify it was March 1, 2002, but we did.

[Laughter.]

Ms. BARNHART. Everyone is familiar with "systems time," and particularly looking at some of the historical experience in the Agency.

Anyway, now we are looking at in 20 months having an electronic disability capability to roll out across the Nation. We have estimated the cost of that is going to be somewhere around \$155 million. I think I have already slated \$7 million of this year's budget to begin the activities. What I have done is set up a triumvirate, I call it, of the Deputy Commissioner for Operations, for Systems, and for Disability and Income Security Programs, and I have them meeting on a regular basis, making decisions to move this process along because that is the only way we are going to stay on this 20-month time frame, and I am absolutely committed to doing it. I think it is so critically important to making progress in this program.

In fact, I will tell you that most people are shocked when I talk to them about what I am doing in this job, and they find out we do not have an electronic disability process. The world is really pretty astounded by that.

Chairman SHAW. Your employees, how technically trained are they to get them into these type of systems? I mean, if I were working for you, you would be in a world of trouble.

[Laughter.]

Ms. BARNHART. If I were doing the work, we would be in a world of trouble, let me tell you. I understand.

Just last week, Mr. Chairman, I approved an additional \$1.8 million for the Office of Systems to use for technical training, specifically to keep our Systems employees up-to-speed, from a technical perspective. The world changes weekly, in terms of the information technology world and systems, and so it is critically important that they stay up-to-speed, and we work to do that. We also have a number of contractors who are experts that help us support many of our systems activities as well.

Chairman SHAW. I have one final question. You said the average age down there is 47 years, I believe you said. How does that

compare to, one, other agencies or the private sector, where they are doing similar type of work as your employees do?

Ms. BARNHART. I can't give you the exact figure, but I know I have been told repeatedly that we are an older workforce, relative to the private sector and relative to other government agencies. We definitely are an older workforce. There is no question about it. I would be happy to submit those comparisons to you, for the record. I just don't remember them.

[The information follows:]

The average age of SSA full-time permanent employees was 46.9 years as of September 30, 2001. This compares to a government-wide average of 46.5 years. I'm unable to provide any comparable figure for any private sector organizations.

Chairman SHAW. If you would, that be helpful to give us some idea of exactly how much trouble we are in. Mr. Matsui?

Mr. MATSUI. Thank you, Mr. Chairman. Thank you for your testimony, Commissioner.

I want to follow up on what Chairman Shaw was talking about in terms of the employment, the workforce. I guess, from what I understand, many of the employees will really start to retire at a rapid rate from about 2007 on; is that kind of the projection or am I mistaken about that number?

Ms. BARNHART. Well, the projection was that we were going to have a huge retirement wave at that point. At this time, and I just had discussions with our Deputy for Human Resources about 3 weeks ago on this, it appears that we have, more or less, leveled the retirement wave. You are correct, it is going to become bigger over time, but my understanding is it averages out to about 3,500 people per year over the next 10 years. There may be some variation, but 35,000 people is a huge number of people to lose out of 65,000.

Mr. MATSUI. I guess the challenge is, and if it is flattened out, it does help it a lot, but then the baby-boom population is due to begin its major retirement from about 2008. So, again, it creates that kind of compaction right there around the late part of this decade, I guess.

Ms. BARNHART. You are absolutely right. In fact, estimates are, I believe, that retirement claims will go up 20 percent and disability claims will go up 30 percent with the aging of the baby boomers, and so we are going to have the convergence of our most experienced people leaving the Agency over this band, this time band when the boomers start to retire, and this huge influx of new claimants, whether it is for retirement survivors or particularly disability. That is where we expect the fastest growth.

Mr. MATSUI. Right. I guess that is, demographically, only because they shorted the workforce and the retirement, that is the part of the baby-boom population. It is something that really can't be helped.

What I like, and I know in your service delivery assessment study, I guess you really get into that aspect of it, too, kind of the long-term aspects of this.

Ms. BARNHART. Oh, yes.

Mr. MATSUI. I guess that would be for another day we can discuss that, but I would like some thoughts on that as to how that is going to be addressed. I know you are working on that.

Ms. BARNHART. Yes, sir, we are. In fact, this is just the first step in the service delivery budget. I started with disability because it is obviously the program that affects nearly 10 million people in this country, and more every year. It is the program we hear the most about, and quite frankly that I get the most letters and calls from members of this Committee and others throughout Capitol Hill. With good reason, because your constituents, in large numbers, are calling and writing to you with concerns about the process, and employee groups are concerned about the process.

The employees themselves are concerned about the level of service. At every level we have concerns about it, but we are now starting to move into other areas of the Agency, and it is my full intention to look at every single activity of the Agency and, obviously, staffing is one of those.

One of the challenges is going to be, quite frankly, to be able to try to map out, as we engage in system improvements, what effect is that going to have on being able to deal with these increased workloads. I mean, obviously, that is something the Office of Management and Budget (OMB) is looking at very closely on behalf of the President because of his management agenda, in terms of e-government, specifically. We are looking at some things now trying to understand what the effects will be.

Mr. MATSUI. My understanding, also, is that because the workforce is aging, obviously, disability claims will begin to increase or probably increasing now because, as you get older, the probabilities of accidents or whatever it may be increase. Obviously, you are doing the disability issues now, and I think that is helpful for us, obviously, over the next 10 years as well, and so there is a match there, and I appreciate that.

I would like to move over to the issue of the current flow chart and the disability issue. Due to no fault of your own and probably glitches in the system, we have, what, about a 500,000 backlog now in terms of disability claims, Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI). Perhaps you can comment.

Ms. BARNHART. I was going to say we have pending at the Office of Hearings and Appeals somewhere over 500,000 hearings. If we look at what we think we need to have in the system at any given point in time, it is somewhere around 250,000 that have to have work, but when you look at initial claims, Mr. Matsui, we have pending there somewhere on the order of 600,000 claims, and we think we should have 400,000, so we have a backlog of 200,000. There are clearly backlogs. How you characterize each stage of the system is more or less technical, but, yes, there are definitely backlogs.

Mr. MATSUI. I would imagine that you are not taking these backlog claims separately. I would imagine it is all being processed, everybody is dealing with current claims, backlog claims. Is that something that you are looking at? In terms of, and for you to get a fresh start, you almost need to get these behind you. On the

other hand, if you do that, you are going to get behind on your current claims. What is your strategy there?

Ms. BARNHART. I was hoping you would give me one because I have asked that question——

[Laughter.]

Ms. BARNHART. To almost everyone, literally, that question——

Mr. MATSUI. This is easy for us to ask you, I want you to know.

Ms. BARNHART. To almost everyone I have come in contact with and had this discussion about this program and this chart in the last 2 weeks.

You are absolutely correct. Let me explain what one of the greatest challenges is with regard to making improvements in the system. With 525 days, approximately, being attributed to the backlog, any system changes that I make, from minor to important to significant changes, for a cohort of cases to move all the way through the system and for me to tell if they had an effect, I will no longer be Commissioner, based on that chart. That is what it means.

Mr. MATSUI. Right.

Ms. BARNHART. I said, for example, when Commissioner Apfel put the prototype into effect several years ago, the first cohort of prototype cases has still not moved through the system. So, if you want to have actual, hard data about the effects of those planned process improvements that are implemented during that test phase, we don't have them yet because we haven't gotten all of the cases through the system.

So, that is one of the great frustrations for me, as my staff comes up with ideas and as we talk to people outside the Agency, and I have reached out to various groups and interest organizations, affected organizations throughout the country. As I consider putting things into effect, if I want to put them in and see how it is going in 6 months or a year, I won't have any information.

So, that is one of the things that drives me to say we really need to separate out the backlog. The other thing is obviously these people have been waiting a very long time. If we look at the Appeals Council, for example, where the average time for a case to move through the Appeals Council is 447 days right now, actually, we have made a lot of progress in the Appeals Council Improvement Project, and we think we are going to have the pending there down to what would be the ideal pipeline of roughly 40,000 cases by the end of this year.

The 447 days comes from the fact that some of these cases have literally been waiting 2 years to be considered. So, this whole issue of the backlog is a tremendously frustrating, complicated, and challenging one, and I am looking at how we can deal with that issue. Is it possible to pull out the backlog and look at it separately and still ensure due process requirements that we must meet?

What I basically told the staff just yesterday is I don't want to end up with a situation we have all experienced at the grocery store. We have been waiting in line for 20 minutes, a new checker opens, and the people at the back of the line move over to that checker, and those who are toward the front of the line get frustrated because we should have been next. So, that is the challenge in looking at that, but it is very important.

Mr. MATSUI. Are you, through your assessment, kind of working on how you can—I know my time is up—deal with that issue or is that something you just have to take on a case-by-case basis?

Ms. BARNHART. I have actually got my lawyers looking at that now to see what the legal requirements are because, obviously, we always want to meet the legal requirements. I have the policy folks looking at it, and I have the operations folks looking at the range of possibilities. It may end up there are none, other than to continue the way we are and just work them in order.

I would certainly hope there are ways to improve, not only for those who are waiting in the backlog, but for all. These are all people. That is the other thing I must emphasize. When we talk about these numbers, these are people. These aren't just numbers. They are Americans, former workers, and disabled people in this country. We should not forget that human quality, the human element of all of this.

Mr. MATSUI. Thank you.

Chairman SHAW. It is also important to remember, as I am sure you do, that this is an earned benefit. By paying into Social Security, this is something that you have paid for. Just like if it were with an insurance company or anything else, these people have, the ones that have a legitimate claim are entitled to receive these benefits, and it is really terrible if they do have to wait.

Mr. Collins?

Mr. COLLINS. Thank you, Mr. Chairman.

Thank you, Commissioner. Your chart was very impressive and very informative. I appreciate the fact that you have broken it down into four areas that you are working toward. The service and staff go hand-in-hand. You have to have the staff to be able to provide the service.

In the area of the disability, I understand that you have been able to acquire more ALJs, but in order to help with this backlog and keep the system moving forward with additional claimants coming in, how many additional ALJs do you think you will need?

Ms. BARNHART. If I may take just a moment to say we have approximately 1,100 on board at this time. I believe a full complement of ALJs in the Agency has been considered to be 1,300. I haven't done a precise calculation at this time, the reason being we have the Azdell case that is pending, and as you know because we have discussed it, the Merit System Protection Board (MSPB) prevented us from hiring ALJs for over a year.

We finally got an exception last August to hire 126 ALJs, which helped to some extent, but we were down to an all-time low of below 900 ALJs. That, obviously, added to the backlogs and the processing time, no question about it. Adding to the problem even more is the fact that we are the largest corps of ALJs in the government, and so everyone uses us as their recruiting ground. The ALJs come to Social Security, get established as ALJs, and the other agencies recruit from our ALJs because they are not allowed to hire outside either due to this pending personnel case with the MSPB. So the inability to hire ALJs certainly has a detrimental effect on the workload, but I would say, at this point, I would consider approximately 1,300 a full complement.

I haven't looked at that issue as closely. Since I can't hire them, it hasn't been an issue, quite frankly.

Mr. COLLINS. As you move through the staffing in the Service, of course, you have to deal with the employees' union. I hope that the employees' union understand that all of this is to benefit the constituency that we all serve and work for.

As you move toward the information technology, I see where you are shooting for 22 months to have that fully implemented and the costs being several million dollars, but has there been a comparison cost of money saved, as far as the snail mail versus the information technology?

Ms. BARNHART. We are currently engaging in that right now, Mr. Collins. Again, I would be happy to provide the results of that cost-effectiveness analysis to the Committee when it is completed. I do think it is important, though, as we look at the methodologies, we are going to look at it from a pure cost savings point of view, but then also the so-called intangible.

I forget, there is, as there is for everything, there is a jargon term for the methodology that one uses to capture the intangibles, but for us the intangible is service, which is I think a really important intangible in this program, in terms of being able to speed up the processing time. So, we will be looking at it from that perspective as well.

Mr. COLLINS. We refer to that as public good. I do, anyway.

[Laughter.]

Mr. COLLINS. It is interesting that you were talking about when you first came they said 7 years for this implementation of the IT. I found it interesting that that compares to the length of time that they said it would take to rewrite a letter informing people that they have been denied or you could expect a check in the mail or such, on a temporary basis. That, too, was going to take 7 years, under the previous Administration. I am not throwing rocks at Ken or Bill Halter, but I think that again is the bog-down within the system, and oftentimes maybe the staff or the union not working as closely with management as they should to rewrite letters and such.

I offered Mr. Halter at that time if he would rewrite a letter on that particular basis and send it to me, I would critique it for him and see if we couldn't get it down to a lot less than four pages. He did, and we did, and I never heard from him again. So, he must not have liked the south Georgia advice that I gave him.

[Laughter.]

Mr. COLLINS. You can say a whole lot in just a few words, if you so desire.

We appreciate the fact that I think you are doing an excellent job, as you review and as you move forward with regulatory change. As we have discussed before, I am a strong promoter of regulatory change. Regulations are easier to change than if we, as Congress, put things down in policy as law. As you know, and as we all know, in order for us to change that type of policy, it takes an act of Congress. Then when you get into 435 experts on this end and 100 on the other end, that sometimes gets to be a total mess before it is over with.

So I hope, Mr. Chairman, if you will give this Commissioner ample time to address all of the issues that she faces, the delays and as she so properly put forth and appropriately put forth, addressing the issue of integrity of numbers. That was part of your testimony, and we appreciate that very much.

Ms. BARNHART. Thank you.

Mr. COLLINS. I have something that I want to extend to you. It is something I know you don't use. I know that, and I feel that you are strong enough to do so, but I think your husband enjoys it as he mows the grass on Saturdays, and so I'll walk around and present it to you, and then I have to go on to a deputy whip meeting.

Thank you, Mr. Chairman, and thank you very much for what you are doing. I am so well pleased to hear someone who has the will, the drive, and the fortitude to move forward with what needs to be done for the constituency of this country when it comes to the Social Security Administration and SSI.

Thank you.

Ms. BARNHART. Thank you very much, Mr. Collins. I appreciate your kind words.

Chairman SHAW. While Mr. Collins is making his presentation, we will call on Mr. Hayworth.

Mr. HAYWORTH. Mr. Chairman, I thank you, as the attention of the assembled multitude turns to my colleague from Georgia for this very special presentation.

[Laughter.]

Mr. HAYWORTH. I don't know if some of the public health folks care to weigh in. Commissioner, I would like to thank you, and I am sorry I don't come bearing gifts, but other than the—

[Laughter.]

Mr. HAYWORTH. I hope there is no restriction on that, by the way.

Chairman SHAW. I can assure you, if Mr. Collins gave it to her, it is well under the gift limit.

[Laughter.]

Mr. HAYWORTH. Let me simply offer the price lists and the commodity of praise, Commissioner. Thank you for coming to Arizona and joining with me in issuing the first Tickets to Work to Members of our disability community. We appreciate the work done there. With that, we could have the same type of success, in short order, on what you have talked about today with the processing of disability cases. You noted your term in office, it is worth commenting that our Founders give each of us in this constitutional role but 2 years, renewable at the bar of public opinion on the first Tuesday following the first Monday in even-numbered years. I think there is something like that coming up in a few months. So, I appreciate the challenge that we confront there.

Commissioner, with your indulgence, I would like to turn to another topic that really one of the tasks in government is to distinguish the urgent from the important, and in the wake of September 11, we really have to turn to border security.

I just wanted to check with you and ask if the Agency is still processing the Social Security number applications of foreign na-

tionals without verifying Immigration and Naturalization Service (INS) documentation? Is that continuing today?

Ms. BARNHART. It is continuing at this moment, but I assure you we have several efforts underway. If I may take a moment to describe those.

I have been working very closely with our Inspector General who is going to testify a little later today, on this issue, and he actually wrote to the Inspector General at the U.S. Department of Justice, emphasizing the importance of having the ability to do the enumeration and entry project and having access to INS data.

We were basically scheduled for INS to assume the enumeration and entry responsibility. However, due to systems issues there, and of course as you read the papers and obviously the action you have taken in this body in recent days, that has been delayed until roughly October of this year.

As of May 25 of this year, however, we are supposed to be able to get online access to what is called the NIIS system, which is the nonimmigrant database at INS. Let me explain what nonimmigrant means. It means individuals who have other than permanent resident alien status in this country; so people on limited visas, time-limited visas, those kinds of things, temporary authority to be in the country.

That will be a huge, huge improvement for us because we will be able to check that database which is very up-to-date. There are not the delays there have been in the past with the Systematic Alien Verification for Entitlements (SAVE) system and some of the other INS data that have been provided. We are very, very encouraged at being able to do that, and that should be happening just later this month.

Mr. HAYWORTH. That is reassuring, but I think what we saw this morning in the realm of disability claims with the chart that rivaled the intricacy of the Sistine Chapel and perhaps took almost as long to process or put together as the actual thing, it tends to typify, no matter the intent, what we studied about in political science as students, bureaucratic inertia, where things kind of get set in motion, but we just never quite get to task completion. So, I appreciate your intent to move toward closure and results because we still confront a very serious situation. I am glad to have your report, and we will continue to work with you and scrutinize that on behalf of the American people.

One other question, Commissioner, does your Agency ask for a picture ID when an individual applies for a Social Security number?

Ms. BARNHART. We do not ask for a picture ID.

Mr. HAYWORTH. Why not?

Ms. BARNHART. We oftentimes ask for a driver's license, if people have it, and they tend to have photographs on them. To be honest, I don't really know what the specific history of that is, other than the fact that photo IDs generally haven't been available, other than through a driver's license. I mean, if you are a student or something you might have a photo ID, but really the driver's license is the main way to obtain one.

One of the other things that we are doing is I have convened an Enumeration Task Force. It has people from all across the Agency

working on it, specifically as a result of the September 11 tragedy. One of the things they are looking at is this whole question of biometrics and what we ought to do to ensure that people are who they say they are. They have not made recommendations to me. We have had some preliminary discussions, but they are looking at all kinds of things, including requiring that people provide photo ID when they apply for a Social Security card.

Mr. HAYWORTH. Well, I thank you, Commissioner, and again would simply point out that with the restrictions placed on travel, as we climb on jetliners, as many of us do, week in and week out, we must have picture ID. It seems to me it would be a simple step that transcends not only Social Security applications, but even for the right to exercise the franchise of voting. However, that is another topic for another hearing.

Commissioner, thank you for your time and your indulgence. Mr. Chairman, I thank you for the time.

Chairman SHAW. Mr. Lewis?

Mr. LEWIS OF KENTUCKY. Thank you, Mr. Chairman. Good morning, Commissioner.

Ms. BARNHART. Good morning.

Mr. LEWIS OF KENTUCKY. I have found, and continue to find, that a lot of people in this country do not understand the Social Security program. In fact, I had a group of people, folks in my office yesterday that should have known, but I don't think they understood how the program operates and what it is all about.

What is the Agency doing to educate, to instruct the public of what the program is all about, the benefits and so forth?

Ms. BARNHART. Actually, there are several things that we do. One of the most important things we do every year is we send out a Social Security statement to all current workers. I have just completed making changes on that statement, and now it is being updated. It is going through a final check with the actuary just to make sure that all of the dates, and numbers, and information in it is absolutely correct because we were updating it based on the 2002 trustees report.

That is one way, and that goes into an explanation of the status of Trust Funds, how you receive your benefits, how they are calculated. It lists what your earnings are. You are supposed to look at it so that you know that you play a role in determining your Social Security benefit, ultimately, based on how much you earn and making sure those earnings are reported correctly. It explains the tax rate for Social Security, the maximum salary that one pays Social Security on, those kinds of things. It is really a very informative document.

We also have public affairs specialists (PAS) throughout the country. I don't have the exact number, but working under each regional communications director, and there are 10 of those, we probably have at least 100 PASs, I would guess, working around the country who attend community events, speak, as requested by various community organizations, and work to try to provide information, answer questions, and discuss any facet of Social Security people request.

In addition to that, we have over 100 publications that we produce that describe various elements of the program that we

make available to people. In fact, I spoke just recently to an organization, a women's group, on what women need to know about Social Security. I took copies of a really excellent publication we have that explained the effect of Social Security on women and the things they need to be concerned about specifically. I know that is of great interest to this Committee, from my prior appearance here.

So, we have a number of things that we do. We also develop public service announcements (PSA), but of course unless you happen to be a late-night person like me, you may never see them because, obviously, SSA PSAs don't get prime time, given the cost of advertising these days, when you are asking people to run them for free, but we do all of those things.

I actually have our Deputy for Communications working to come up with a public information campaign for us, looking at all of these elements to see if there are holes in things we need to be doing and then to augment that.

Mr. LEWIS OF KENTUCKY. That is great. It seems to always be the situation, whether it is a townhall meeting or wherever I am and talking about Social Security, that a lot of people see Social Security as a retirement account, that their Social Security number is their account number, and that they are paying into a fund, and it is drawing interest, and they are going to get that money, plus their interest back when they retire.

When I explained to them how the system actually works, they are pretty surprised. So just getting to the heart of what Social Security really is would, I think, help a lot of people understand that system.

Ms. BARNHART. I agree. It is a very important program. It touches so many people in this country, more than any other program that we have in the government. So, I think it is very, very important that people understand it. I find people who have the same kind of confusion. I have had phone calls since I have been in this job, quite frankly, expressing that kind of confusion.

Mr. LEWIS OF KENTUCKY. Thank you.

Chairman SHAW. Mr. Pomeroy?

Mr. POMEROY. Thank you, Mr. Chairman. I thank you for holding this hearing. Obviously, the situation of people needing to have case review and not having these kinds of delays is of great concern and hardship to them and an appropriate matter for this hearing. I appreciate it.

Commissioner, the survey of the Advisory Board seemed to come up with the conclusion that these delays, the managers' evaluation of these delays are attributed to five factors, four of which relate to staffing limitations, reduction in the number of supervisory management staff, reduction or elimination of case reviews, decrease in staff training time, and staff shortcuts.

The other reason given was the increasing complexity of the workload. Basically, you have got, in light of the limitations of resources for the Agency's administrative purposes, you have got people just straining to the limit and trying to do as best they can, but overwhelmed by workload. Is that the thrust of your conclusion about these delays?

Ms. BARNHART. I think people are straining to the limit in the Agency. I absolutely agree with that. I think we have very hard-

working people at the front lines and at headquarters, and I think the people at the frontlines are perhaps under greater stress because they are actually dealing with the public.

They are the people who sit and talk to the claimants and the applicants, and I don't think there is any question they work very hard. I have visited a number of district offices myself, talked to the claims reps, the tele-service centers, talked to the service reps and find the same thing, our phone lines are always busy.

We took over 59 million calls this year. We had expected 61 million but it looks like 59 million. That actually is important. I should talk about that for just a moment because, for that reason, we are trying to do more through e-government. That, obviously, is one part of the President's management agenda, but the Agency has been working on it, and we are even more dedicated and committed to it under the President's initiative.

We have actually seen less phone calls than we anticipated coming into our 800-number, and to deal with the 800-number phone calls, we have employees who perform what we call spike activities. I know this Committee is well familiar with that, people who normally perform other functions, but at certain peak days are pulled off of that to answer the telephones, which clearly adds to the pressure for those employees.

What we believe is happening is the reason we are getting less phone calls is because more people are doing things through the Internet. They are actually going to the Internet for service, and that is very important. We are trying to figure out how to quantify that, quite frankly, to be able to tell did they go to the Internet, instead of making the phone call, and if they went to the Internet, did they get the service that they needed? That is not an easy thing to necessarily quantify, but we are looking at ways of doing that. The Office of Management and Budget is very interested, too, in us being able to quantify people doing business from an e-government perspective.

Going back to your original question and the thrust of it, yes, I think people are working very hard in the Agency.

Mr. POMEROY. Your calls are running maybe 4 percent below projection or something.

Ms. BARNHART. Something like that.

Mr. POMEROY. It is nice, but it is certainly not the solution to what we are looking at in terms of people basically—what worries me is you have got career professionals, many of whom, a bunch of them reaching the end of their public service, soon to be retiring, at the very time you have got the demographics of the country changing in ways that, in all likelihood, will place more and more demand on the Agency in this way. I think we can look down the road and not very far in the very foreseeable compounding of this problem, in light of administrative capability and capacity.

Ms. BARNHART. You are absolutely right. There are many factors that are contributing to it. When I mentioned the e-government, you know, providing services that way, I just think that is something we obviously must do. There is a whole generation coming along behind us that is going to be able to, and prefer to do business over the Internet. That is not true, certainly, of my moth-

er's generation, although my mother is getting there, but it is more true of ours. I wasn't suggesting—

Mr. POMEROY. I am just about out of time, Commissioner. I agree with you. I think it is terrific, and one answer and a question that has many answers or a problem that has many answers.

I do think we ought to continue to evaluate whether or not the funding for the Agency ought to come from the Social Security Trust Fund, as opposed to general fund revenues. Now, with the funding shortfall, you worry about taking those kinds of steps. On the other hand, it seems to me only very rational that you would have the administrative costs of the program coming from the Trust Fund itself, and over time that might lead toward a better ability to put in place the kinds of resources to competently manage the program.

Do you have any thoughts on that?

Ms. BARNHART. As you rightly point out, SSI has been limited by the administrative cap. Our Limitation on Administrative Expenses (LAE) account, our Limitation on Administrative Expenses is part of that overall governmental cap.

One of the issues that I have talked about related to that cap specifically is the whole issue of program integrity. There are many areas where we could actually save program dollars if we spent Administration dollars, for example, engaging in certain kinds of activities, but we have to spend funds within the cap to save funds outside of the cap. I do think that, as a result, while we always want to accomplish a balance between good service, program integrity, and fiscal stewardship, obviously, when the Agency doesn't "benefit" from that return in a direct way, I think it does make those areas less attractive to move into and puts the pressure on for doing those in a different place.

I just wanted to make one follow-up comment to your prior comment, that I stopped talking on my second-to-the-last answer because I didn't want to use up your time, but now that it is not technically your time—

[Laughter.]

Ms. BARNHART. I would like to add something, if I may, and that is your point about it is going to take many answers. One of the things that I have tried to emphasize to the constituent groups that I have spoken to, organizations and individuals, to the field staff I have spoken to, to the staff here, to the members here, and in the Senate that I have spoken to is this is sort of going to be death by a thousand cuts, for lack of a better term. There is no silver bullet. I cannot wave a magic wand, no one can. It is going to be a whole series of things, and therefore I am willing to look at very small things and very big things.

Mr. POMEROY. Yes.

Ms. BARNHART. I consider e-dib a very big thing, in terms of helping deal with staffing issues, taking some of the pressure off, having staff doing more of the work, the higher level work, as opposed to the lower level work, providing service. At the same time, if we need to look at different ways of getting Xeroxing done in the Agency, for example, I don't think it is a good use of a GS-11 or GS-12's time to have them standing and doing Xeroxing. It is not their fault. That is the way the system is right now.

I think it is basically inexcusable, when it is taking us over a year, but based on the way the service is being provided right now and due to the backlogs, to get a hearing transcript typed so that the case can move forward. So, there are going to be all different kinds of things we are going to look at. So, I really appreciate you sharing that perspective because some things may seem very insignificant, compared to others, but I really believe it is going to be the combination of all of those things that are going to help us make a difference.

Chairman SHAW. Mr. Brady?

Mr. BRADY. Thank you, Commissioner, for your testimony today. I know you have a lot on your plate, but I really appreciate the focus you have given today on disability process, and more importantly just accelerating that program because people really ought not to have to wait that long to get a fair, you know, and timely hearing on their case.

I think the Agency should be commended for the work it has done in trying to break the logjam in hiring new ALJs. The 126 extra ones are a huge help. I understand we could hire another 120 and still only be back to 1998 levels. So, it looks like we have a lot—

Ms. BARNHART. If I may thank you for your personal involvement in that and assistance on that. I really, really appreciate that. It made a huge difference for us.

Mr. BRADY. You are welcome. Again, the Agency did great work coordinating everything, and you need to let the Subcommittee know how we can help in that process. I think we work well together.

In addition to hiring more judges to accelerate appeals, it seems like, at least in looking at the systems in our State and our area, that we need to have applications that include more complete information up front. That seems to be a key in making accurate decisions early in the process, better-trained State examiners that will make more accurate initial rulings.

It seems, looking at the trend, we have fewer and fewer disability cases where you can have a medical expert simply say this person isn't physically able to work, and there are more and more cases where it is really a case of talking to an occupational expert who can say this person can work in this case in these types of jobs. That means more gray areas, more gray decisions and why I think a focus on training those examiners early on could be a big help, better communications with the claimants. They feel lost in the process in this length of time, it is one time to have it take forever in their minds, and in truth, it is nothing, they don't even know what is going on with their case.

Finally, it just seems like over the 30 years, since the Federal disability law was written, we have had a number of contradictory and conflicting legal rulings that, at some point perhaps this Committee, Mr. Chairman, may need to take a hard look at rewriting the disability portion of Federal law and just try to clarify some of these issues.

That being said, State-to-State the number of appeals times and their allowances, approvals, and disapprovals, seem to vary a great deal. In Texas, we seem to be slower making decisions and less ac-

curate in doing that. Now we have gotten better in the last year because the Agency's focus, the public's focus, and congressional focus, which is really helpful, but still can you explain why the differences exist so dramatically, it seems like, from State-to-State on a Federal program that ought to have pretty consistent, both timing and rulings.

Ms. BARNHART. You make an excellent point. As you know, this has been a longstanding challenge for the Agency. I remember when I went to work in the Senate in 1977, the very first U.S. General Accounting Office (GAO) report I ever read in my life had to do with the variation among State DDSs in making disability determinations. I think that report has been updated at least a couple of times.

I have had this discussion as a Member of the Social Security Advisory Board, with the policy folks at Social Security, and since becoming Commissioner. I am told that we can actually sort out and account for some of the variation based on economic factors. For example, in some States, percentagewise, you may get more actual disability applications as a result of the economics in the State, and for that reason, obviously, if you have more people, you are having to deal with more claims per worker kind of thing, and so that affects the way that you make the determinations.

I wish I had a complete answer for you. I don't. I am going to be thoroughly briefed by my policy staff on this analysis that they have done, that they say actually can account for a substantial part of the variation from State-to-State, and I would be more than happy to extend the offer to your staff, if you would like for us to come up and brief them on that as well—

Mr. BRADY. Great.

Ms. BARNHART. To provide you with the information that we have. As optimistic as the staff sounds, however, I am not sure it is going to explain it all away. I think, when you have more people applying in a State, relatively speaking, then odds are you are going to have more people that probably aren't necessarily eligible for it, for disability, for example, and that is one of the things that I think creates the variation, but we would be happy to pursue this discussion with you.

Mr. BRADY. I just want to point out, I had recently made a request of your office to come down to Houston, Texas, to look at our problems firsthand, and my understanding is you immediately said, absolutely, we will work it out. So, I appreciate it. That type of responsiveness is really very helpful. Thanks.

Ms. BARNHART. Thank you. I appreciate the invitation. I am looking forward to making that trip.

Mr. BRADY. Thank you, Mr. Chairman.

Chairman SHAW. Thank you. Mr. Doggett?

Mr. DOGGETT. Thank you, Mr. Chairman.

Commissioner, I regret a conflicting meeting prevented my hearing some of your earlier comments, and I am sure you discussed your efforts to address delay, but some of these delays really are troubling.

I understand, for example, that it was determined that through a computer error of some type that there were a number of people, perhaps as many as 500,000 disability recipients who should have

been disability recipients, but because of a computer error, they were denied their benefits. How long will it take you to resolve that problem?

Ms. BARNHART. We are working on that plan right now. Let me tell you where we are on that, and you are absolutely correct. Our estimate right now is approximately 505,000 individuals affected by what we call the special disability workload. That is, for other people who may not be aware of it, a situation where individuals who were eligible for SSI may have been eligible actually for Title II disability, but it was not discovered at the point of entry at application. Others, over time, because they were working, even though in relatively low-paying jobs, they were earning quarters of coverage, and they became eligible for Title II, and benefits did not occur.

That is the issue. So, there are several categories of individuals that we are looking at comprising that 505,000. We are looking at how we ought to do that, how we ought to work that. To be honest, the Agency thought it was a much lower number of people last year. They were operating under the assumption it was somewhere around 130,000 or 200,000 people total, and it is only in recent weeks that we have discovered it is actually over half a million cases.

So, the approach that was being pursued before may no longer be appropriate, quite frankly, given the increase in the number of cases. What we are looking at doing is having our most senior people, our highest level people in the staff level work those cases. They are very complicated cases. We did have a sample done of cases. People thought the cases might take around 4 hours apiece. It turns out, my understanding is, they take about 12.5 hours apiece to work.

So, we have looked at doing the calculations on how many work years that will take, how long it could take, and to be perfectly candid, even if I started trying to shift as many people as I could today who could do that workload and still be able to maintain doing other work in the Agency, I think it would take a minimum of 3 years to get through that workload because it requires a level of expertise that all of the workers in the Agency simply don't have.

Mr. DOGGETT. These are people that are probably disabled.

Ms. BARNHART. They are.

Mr. DOGGETT. A half a million?

Ms. BARNHART. Yes.

Mr. DOGGETT. They are going to have to wait, they may have waited now for months or years, but they will have to wait, some of them, as much as 3 years more to get their claim processed.

Ms. BARNHART. That is my best estimate. We are working on it. Let me just say I realize how critically important this is because it is 500,000 cases.

Mr. DOGGETT. Next week, perhaps as early as next week, we have a supplemental appropriations bill coming over here. I understand that it has been estimated that, since time is money, as well as delay for these folks, that the cost could be as much as \$339 million additional to get these cases resolved. How much have you asked to be included in the appropriations bill to take care of this problem?

Ms. BARNHART. We originally had some funds in our 2002 budget that was supposed to be designated to special disability. I don't remember that precise amount, but we had some, but obviously that is when we thought it was a much lower number of cases.

I haven't made a request yet, the reason being that even if I were to ask for, and receive, the \$339 million tomorrow, I could not begin using it immediately because I don't have the people who can do that work at that level and take them out of other parts of the Agency, again. So, what I have the staff working on, and we just had a meeting on this, frankly, just a couple of days ago, is to chart this out for me year-by-year. In other words, we think it is basically the work value, the hours it would take to work those cases, that would equal \$339 million, with some money in for support, too, and equipment, and those kinds of things.

I have asked the staff to plot out for me, based on the number of people that we think we have that can do this work that we could shift over to doing this work, and we are asking for volunteers, first. You know, we are not planning to do directed reassignments or anything like that. We are going to use a variety of plans. Some people will stay in their own office, other people might move to cadres. We have to bargain all of this with the union, and we will be doing that on impact and implementation, but I have asked them to provide for me what we could use on a year-by-year basis. I don't have that number yet, but believe me, we are working feverishly on trying to get there.

Mr. DOGGETT. You expect some additional appropriations will be essential to allowing you to complete the job, even within 3 years?

Ms. BARNHART. I know that we don't have any funds in our budget for next year at all for special disability because we had anticipated that based on the number of cases we thought it was we would be finished with that workload, and we specifically wrote in our budget justification we did not include funds for special disability because we expected to be completed with it, and we won't be.

Mr. DOGGETT. Thank you. Thank you, Mr. Chairman.

Chairman SHAW. Ms. Barnhart, in going through the testimony and the questioning process, it became perhaps that at some particular point, when you are ready, and Mr. Matsui and I have briefly discussed this, that perhaps you might want to come in and have some type of a workshop just sitting around the table trying to figure out what we can do. After you get your ducks in a row down there and figure out exactly the direction that you want to go, come back and talk further with the Committee because we are very encouraged by what you are doing, but we know that you are, at some point, are going to need the cooperation of the Congress, and that is something that we would like to help out with.

Ms. BARNHART. Thank you very much. I would really look forward to doing that. I would really appreciate that opportunity.

Chairman SHAW. We are delighted that you are down there, and you are doing what you are doing, and keep it up, and we look forward to working with you over the next 5 years.

Ms. BARNHART. Thank you. Again, I appreciate the opportunity today, and I just want to say, too, I really appreciate the Committee's ongoing support. You have done many things for this Agency over the years, and have ever since I have been there, and I really appreciate that.

[Questions submitted by Chairman Shaw to Ms. Barnhart, and her responses follow:]

**1. What efforts have been made to ensure the integrity of the Social Security number enumeration process since the September 11th attacks?**

After the September 11th terrorist attacks, SSA chartered an executive level Enumeration Response Team (ERT) which has met regularly since September 11th to explore and track progress toward completion of a range of policy and procedural changes to further enhance the integrity of its enumeration processes. Initially, the ERT provided eight recommendations that could be accomplished quickly. Below is a list of the recommendations and the status of each.

1. Provide refresher training on enumeration policy and procedures, with emphasis on enumerating non-citizens, for all involved staff.

The SSA quickly provided refresher training to all field office employees and management on existing enumeration procedures, with emphasis on enumeration of non-citizens. We conducted the original training on December 19 and 20, 2001 and rebroadcast it on June 5 and 14, 2002.

2. Convene a joint task force between SSA, Immigration and Naturalization Service (INS), the Department of State (DoS) and Office of Refugee Resettlement (ORR) to resolve issues involving enumeration of non-citizens, including working out procedures for verifying INS documents before Social Security number (SSN) issuance.

The SSA has been working with INS, the DoS and the ORR to establish a procedure for full collateral verification of all alien status documentation, including INS authorization to work. We are trying to devise a process that will minimize negative impact on many thousands of aliens who enter this country legally, with permission to work. In February 2002 we began verifying the documentation of all refugees. In May 2002 we gained access to INS's Non-Immigrant Information System to electronically verify the documents of non-immigrants. We began verifying documents with INS in July and will gradually phase-in full collateral verification of alien documentation by September 2002.

3. Eliminate driver's licenses as a reason for issuing a non-work SSN. In March 2002 we eliminated driver's licenses from the definition of a valid nonwork reason to assign an SSN.

4. Provide an alternative to giving out SSN printouts (for SSN verification) to number holders that contain personal information.

In February 2002 we began providing an abbreviated SSN printout to persons who ask for SSN verification. The document provides the required verification, but contains far less information about the individual to whom the SSN is assigned than did the document we provided previously.

5. Conduct a mandatory interview for all applicants for original SSNs over the age of 12. Verify the birth records of all applicants for original SSNs over the age of 1 and require evidence of identity for all children, regardless of age.

In June 2002 we began verifying birth records for U.S.-born SSN applicants age 1 or older with the custodian of records. (Under former rules, we verified birth records for applicants age 18 and older.) We are drafting regulations to require a face-to-face interview for SSN applicants age 12 or older and eliminate the waiver of evidence of identity for SSN applicants under age 7.

6. Determine the feasibility of photocopying (or scanning) all documentary evidence submitted with SS-5 applications. A pilot was started February 25, 2002 and completed March 22, 2002. Evaluation of the pilot results and recommendations are under way.

7. Change the Modernized Enumeration System (MES) to provide an electronic audit trail for all processing modes. As of mid-December 2001, new audit records for SSN applications were established.

8. Implement online Social Security Number Verification System (SSNVS). In April 2002 a pilot of an online version of the existing Employer Verification System was started with nine participants. See the response to question 3 for more information.

**2. The American public is becoming increasingly aware of the importance of keeping their SSN secure, including not routinely providing it for frivolous reasons. In this vein, can you tell us what SSA is doing to keep the SSN secure? For example, does SSA place an individual's SSN on correspondence they send out? If so, why? Are there any plans to modify this practice? If not, then why?**

For many years, encouraging members of the public to protect their Social Security number has been a key message in the Agency's public information efforts. Information on how people should protect their number, as well as advice to victims of identity theft, is available in the Agency's publications, news releases and on its website [www.ssa.gov](http://www.ssa.gov).

To minimize the occurrence of SSN misuse/identity theft, SSA maintains strict confidentiality of individual records, disclosing only where authorized by law; reconciles earnings when we learn that someone is working under another person's SSN; and contracts with third parties to verify SSNs for specific reasons.

The annual Social Security Statement helps workers verify their earnings and alerts them to the possibility that someone else is working using their number. This is sent yearly to all working persons age 25 or older who are not yet receiving benefits, using address information provided to IRS by tax filers. (The statement shows only a truncated version of the recipient's SSN to safeguard the number should the address information no longer be current. The first page of the *Statement* also bears this reminder: Prevent identify theft—protect your Social Security number.)

While many Federal, State and private organizations routinely use and display SSNs in their mailings, SSA recognizes that it has a special responsibility to protect the privacy of individuals with regard to information contained in the agency's records. Such open display increases the risk of someone using a person's name and SSN for fraudulent purposes.

In correspondence, SSA does not show the addressee's SSN on the envelope and ensures that the number is not visible through the window of the envelope. The SSA does not include the full SSN on the annual cost of living adjustment notices that are mailed to Social Security beneficiaries who receive their monthly benefits by direct deposit; only the last four digits of the Social Security number are shown. The SSN is not displayed on checks so that it is visible through envelope windows.

**3. The SSA is undertaking a pilot program in which companies can verify their employees' Social Security Numbers (SSN). Can you describe this program?**

Employers already can validate their employees' names and SSNs against information in SSA's records, and SSA encourages them to do so. The Social Security Number Verification Service (SSNVS) will allow employers to validate SSNs via the Internet. The objective of the SSNVS project is to provide employers and payroll professionals with online real-time or next-business-day name and SSN verification services electronically, which will improve the accuracy of the annual wage report submission (Forms W-2 Annual Wage and Tax Statement).

Under SSNVS, employers can verify up to 10 names and SSNs and get immediate results via interactive verification, or can verify large numbers of employees, by uploading files for batch processing with next-day response. Data that an employer supplies to SSA for verification will be annotated with a match/no match indicator and will be returned to the employer. The SSA will retain an audit record of all supplied data. In addition, the data collected will be used as part of the evaluation of the SSNVS process. None of the information provided by employers will be used for any other purpose.

The SSA currently provides this SSN verification by telephone, paper and magnetic media. It is anticipated that the new Internet service will enable employers to verify name/number combinations more easily than the options that are currently available.

**4. What information is exchanged with the Immigration and Naturalization Service regarding SSNs and applicants entering the United States? Can you explain the process by which information is exchanged?**

All applicants for original SSN cards must provide evidence of age, identity and citizenship or alien status. The SSA exchanges information with INS when verifying the information on the INS document presented as evidence of alien status. There are several circumstances under which these exchanges occur.

The first step is the INS' Systematic Alien Verification for Entitlements (SAVE) online verification system to determine the status of a noncitizen who has applied for an SSN. All SSA offices have online access to certain INS information for immigrants and nonimmigrants. When the INS document presented shows an alien reg-

istration number (A number) or admission number from the INS Form I-94 (Arrival-Departure Record), the SSA employee queries SAVE, entering the appropriate number. The query response will determine whether the document is valid.

When this electronic process does not yield results, SSA prepares a written request that is mailed to INS requesting verification. When INS returns the form to SSA, INS indicates the validity of the document and the alien's immigration status or work authority (e.g., "the document appears valid and relates to a lawful permanent resident alien of the United States").

**5. As you know, the earnings suspense file contains earnings that could not be posted to an individual's account due to a mismatch of the name and SSN. Can you tell us what happens when an SSN has multiple earnings from different individuals posted to it?**

An SSN that has multiple earnings from different individuals posted to it is considered a possible scrambled earnings record. We may become aware of scrambled earnings 1) while processing W-2s; 2) through follow-ups to the yearly Social Security Statement that we send to every wage earner 25 years or older showing the wage earner what is on SSA records; 3) in our day-to-day processing of SSN applications or claims for benefits; and 4) IRS inquiries concerning two or more individuals with the same surname who used the same SSN on their income tax returns.

The earnings remain on the record until we investigate and take corrective action to remove the erroneous postings. We request appropriate identifying information to determine the number holder's true identity. To locate the individuals using the wrong SSN we use employer records, changes of addresses, Department of Motor Vehicles' records and state employment office records. If we determine to whom the earnings rightfully belong, we post them to the appropriate record. If we are unable to determine to whom the earnings belong, the earnings are then placed in the earnings suspense files.

**6. Can you provide what safeguards and internal controls SSA employs when issuing SSNs?**

Maintaining the integrity of the enumeration process has always been a top priority for SSA. Historically, we have tried to anticipate potential susceptibility to fraud and have implemented early measures to eliminate opportunities for exploitation. Our measures include requiring proof of age, citizenship or alien status, and identity for an original Social Security card. We also require proof of identity and may require evidence of age, citizenship or alien status for duplicate or corrected Social Security cards. (See responses to questions 1 and 2 for additional safeguards to protect the SSN and minimize the occurrence of SSN misuse/identity theft.) Our efforts to eliminate SSN misuse within SSA's business processes focus on preventing the assignment of valid SSNs to fictitious individuals as well as to those who do not legitimately meet the requirements for the SSNs.

The SSA's efforts to eliminate its reliance on customer-presented paper documents and increase the detection of fraudulent documents in field offices include the Enumeration-at-Birth (EAB) process in which SSA assigns SSNs to nearly 4 million newborns annually, as part of each State's birth registration process. The process is quick, easy and convenient since parents can apply for the baby's SSN when filling out birth certificate information at the hospital.

As of March 2001, when an application for an original SSN is received for a child under the age of 18, the system performs numerous checks. It verifies parent's name and SSN and does not allow a card to be issued if certain confidential age and death status checks indicate potential fraud. In December 2001 we have an improved electronic audit trail in which "Suspect" SSN application records are identified, and a description of evidence for all SSN applications is maintained.

As of June 2002, before assigning a new Social Security number to an individual that is born in the U.S. who is 1 year or older, we contact the office that issued the birth certificate to make sure that the record provided is valid.

In July 2002, we began implementing procedures to verify documents submitted by noncitizens requesting a SSN with the INS as explained in the response to question 4.

We also guard against employee fraud. We allow only qualified field office employees to make input to the enumeration system and use a Comprehensive Integrity Review Process (CIRP) which detects, identifies, and thus, deters both potential employee and client fraud. Based on certain characteristics of the information input to the enumeration system, CIRP identifies potentially invalid applications. Applications identified by CIRP are referred to the OIG for investigation.

**7. The President has called for discussion about ways to strengthen the Social Security system. In addition, the President's Commission to Strengthen Social Security released its final report recommending several options for reform. What is your agency's role relative to the Social Security debate? Does the agency plan to conduct comparative analyses of the effects of various reform proposals on beneficiaries, the budget, and the economy?**

The Social Security Administration intends to play an active role in the solvency debate. Solvency is one of four priority areas in the Agency's strategic plan and the lead on this issue has been assigned to Deputy Commissioner James Lockhart.

In addition, the Office of the Chief Actuary has provided, and will continue to provide, independent actuarial assessments of comprehensive proposals to modernize Social Security. In addition to assessing effects on the financial status of the trust funds, the actuary's analysis of recent proposals, including the President's Commission models and your own proposal, have included estimates of the effects on unified budget balances, under the intermediate assumptions of the trustees.

**8. Several members of Congress have introduced legislation requiring SSA to provide information in the Social Security Statement on 1) the date Social Security will first experience a cash flow deficit 2) the date the trust funds are exhausted 3) the ratio of taxes collected to benefits paid 4) rate of return information 5) an explanation of the nature of the Trust Funds. Since you have been Commissioner, have you made any changes to the Social Security Statement to include additional information or make these pieces of information more prominent? Do you intend on making future improvements to the Social Security Statement? Are there any of these pieces of information that you think should not be included in the Social Security Statement, and why?**

We have updated the important solvency dates based on the estimates in the 2002 Trustees Report and deleted some words that did not add factual information to the *Statement*. We plan to make some additional changes to the Social Security Statement in the near future. The *Statement* serves as a factual document that informs workers about how the Social Security program operates and how it is funded. First and foremost, it is a tool for Americans to use to plan their retirement. We always work to improve the quality of information we provide through the Social Security Statement and will keep the Subcommittee apprised of the changes made to the *Statement* in the future.

Communicating complicated technical information in a way that is understandable to a diverse public can be difficult, but SSA has worked diligently to ensure that the message in our Social Security Statement is clear. We want to reiterate our commitment to ensure that the *Statement* remains a factual document that informs workers about how the program operates and how it is funded. This is important information that the public needs to have from its government.

**9. Last fiscal year, GAO reported your agency spent about \$741 million on information technology and systems. In recent reports requested by me in my capacity as chairman, it has been noted that while progress has been identified, GAO found weaknesses in five key areas, and recommended actions to improve SSA information technology management practices. As automation is the key to your effective service delivery in the future, what efforts are you making to address these recommendations?**

GAO made a number of recommendations for improvement in its report, "Information Technology Management: Social Security Administration Practices Can Be Improved." Below is a discussion of the recommendations and our efforts to address these recommendations.

We were asked to develop and implement a process guide that establishes the policies, procedures and key criteria for conducting the information technology (IT) investment management process and guiding executive staff operations. The SSA has had a documented Information Technology (IT) Capital Planning and Investment Control (CPIC) process in place for years. As part of SSA's continuing effort to refine its IT CPIC process, the Agency is testing and evaluating promising changes to that process. These potential improvements include the use of the Information Technology Investment Portfolio System (I-TIPS) investment management software and Expert Choice decision-support software as well as recommendations for other process improvements from higher monitoring authorities and consultants.

GAO requested that we develop and maintain selection criteria that include explicit cost, benefit, schedule and risk criteria to facilitate the objective analysis, comparison, prioritization and selection of information technology investments. These selection criteria were defined and tested using Expert Choice decision-support soft-

ware. The Agency continues to refine its selection process and will document a final model in its CPIC process guide.

Another recommendation was that we analyze and prioritize all IT investments based on the predefined selection criteria and make selection decisions according to the established process. We are adopting an IT planning and portfolio selection process that includes predefined selection criteria. This new process includes the development of a documented prioritized IT plan (based on predefined selection criteria) for each senior executive's area of responsibility. These plans will be provided to the CIO-chaired Executive-level Information Technology Advisory Board (ITAB). That board will annually perform enterprise-wide IT planning and prioritization using the established evaluation criteria (qualitative and quantitative factors including strategic alignment, mission effectiveness, organization impact, risk and return on investment) to produce a single, integrated Agency IT project portfolio.

It was recommended that we establish and annually review cost, benefit, schedule and risk life-cycle expectations for each selected investment. Our IT planning and budgeting process will establish this for each selected investment. The CIO-chaired, Executive-level ITAB will review these expectations on an annual or more frequent basis.

GAO asked that we revise the information technology oversight process so that the executive staff oversees the comparison of actual cost, benefit, schedule and risk data with original estimates for all investments to determine whether they are proceeding as expected and, if not, to take corrective actions as appropriate. The CIO-chaired, Executive-level ITAB and senior Office of Systems managers will oversee these comparisons to determine whether they are proceeding as expected or require corrective action. The ITAB will review these projects on a quarterly basis. The Office of Systems will review major projects on a monthly basis.

We were asked to regularly perform post-implementation reviews of information technology investments and develop lessons learned from the process. The agency is developing procedures to guide future post-implementation reviews (PIR) that include criteria for designating projects for PIR.

Another recommendation included developing, managing and regularly evaluating the performance of a comprehensive information technology investment portfolio containing detailed and summary information (including data on costs, benefits, schedules and risks) for all IT investments. In concert with the Agency's planning, budgeting, acquisition, systems development and assessment processes, ITAB will develop, manage and regularly evaluate the performance of the Agency's comprehensive information technology investment portfolio.

Finally, we were asked to implement investment process benchmarking so that measurable improvements may be made to Agency information investment management processes based on those used by best in-class organizations. The Agency has investigated some of these issues in discussions with other agencies concerning their implementation of I-TIPS and Expert Choice. This is an ongoing activity. In addition, the Agency has acquired the support of experts in areas such as CPIC best practices, electronic service value measurement, program management, project management and IT cost allocation strategies. Procedures for benchmarking will be included in the CPIC processing guide.

#### **10. What efforts are underway to recruit new employees? How are these efforts progressing?**

The SSA is actively recruiting new employees around the nation. Recruiters regularly visit college campuses, participate in job fairs and disseminate job information in local communities. Recruiters are continually seeking out qualified applicants of diverse backgrounds with an interest in public service.

To assist our recruiters in attracting applicants with an interest in serving the public, the Agency developed and implemented a new marketing plan in 2002. Using the theme "Make a difference in people's lives and your own," new tabletop exhibits, posters, electronic images, CD-ROM "business cards" and professional signage were created. With these recruitment tools, SSA recruiters have a wide range of resources comparable to the best in the private and public sectors.

As part of the Agency's marketing campaign, the Career Opportunities webpage on SSA's Internet site was redesigned. Through the SSA Internet site, the public has the opportunity to learn about SSA, its mission and the vast array of benefits the Agency offers. In addition, information is provided about career opportunities in the fields of public contact, information technology, legal, law enforcement and other occupations (actuary, economist, and so forth.). Information for students and college graduates is also highlighted. Most important, the website shows actual job vacancies and information for applying are provided.

To further strengthen and coordinate our recruitment efforts around the nation, the first in a series of national recruitment strategy conferences was held by SSA in April 2002 in Philadelphia. The conference brought the Agency's recruitment officers together to discuss 'best practices' and implementation of the new recruitment strategy and marketing campaign.

The Agency's recruitment efforts are progressing very well. Over the last 4 fiscal years (FY 98–FY 01), we have hired 11,600 employees. With the retirement of SSA's "baby boomers" to continue through 2010, the Agency is expected to hire approximately 3,500 employees a year. We are well positioned to ensure that our recruitment efforts meet the projected hiring targets.

In the months and years ahead, SSA will ensure that its recruitment strategies and marketing campaigns are effective and designed to attract a talented workforce committed to serving the public and fulfilling the Agency's mission.

**11. GAO recommended in their testimony that SSA prepare a detailed plan for how service will be delivered in the future. Have you completed such a plan?**

The SSA is committed to assessing the level of service that SSA should be providing Americans. GAO has asked us to "spell out who will provide what types of services in the future, where these services will be made available and the steps and timetables for accomplishing needed changes."

We have formed a group to conduct a service delivery budget assessment, matching up resource needs against the level of service we would like to deliver. This is a fresh approach to how Social Security works. We are drilling down into our processes. We are getting the data, defining what we do now, how it works and what it costs.

We are looking at enumeration, retirement claims, disability case processing, appeals and major post-entitlement workloads, including continuing disability reviews, SSI non-disability redeterminations, as well as other workloads.

Upon completion of this assessment, SSA will be able to relate the desired level of service to current service levels, determine required action, including further automation and process improvement, to provide the appropriate level of service.

**12. President Bush is to be congratulated for making full implementation of the Ticket to Work legislation a focus of his New Freedom Initiative for People with Disabilities. Full and effective implementation of TWWIA is central to our efforts to address the 70% unemployment rate among people with severe disabilities. The issuance of the final regulations on December 28, 2001 and the implementation in several States are major steps in reaching that goal. Can you give us indication of the reaction to how the Ticket is working in those States in which the program has been implemented?**

We are implementing the Ticket to Work program in three phases, for full implementation by January 2004. Over a 5-month period, we mailed tickets to eligible beneficiaries in the 13 States we selected for Phase One. In February 2002, we mailed tickets to 10 percent of eligible beneficiaries in those States, accompanied by an informational package explaining the Ticket to Work program.

We did not mail any tickets in March, so that we could study the effects of the first mailing. We mailed 20 percent of tickets and informational packages to eligible beneficiaries in April, 30 percent in May and the remaining 40 percent were mailed in June. Beneficiaries who are eligible for a ticket in these States could also request the Program Manager, MAXIMUS, to mail their tickets before they would receive them based on the schedule described above. Almost 6,000 beneficiaries have taken advantage of this "ticket on demand" feature.

After consultation with officials in New York State, we decided not to mail any tickets to beneficiaries in their State during April 2002. After jointly considering with them the effect of the February mailing, we decided to mail tickets to another 10 percent of the eligible beneficiaries in New York in May and to again suspend the mailing in June. We are jointly considering with them how to release the remaining 80 percent of the tickets to beneficiaries in New York State.

Through June 14, 2002, we have approved 378 organizations to serve beneficiaries as Employment Networks (ENs) in the Phase One States, and there are another 66 applications awaiting approval. We have awarded contracts to ENs in each of the 13 States, ranging from 96 in New York State to 6 in Vermont. In addition, there are seven ENs that serve beneficiaries either nationally or in more than one State.

MAXIMUS is continuing to market the Program to organizations who can serve beneficiaries in the Phase One States and is expanding their efforts to organizations in the 20 States and the District of Columbia that will be included in the implemen-

tation of Phase Two of the program. So far, the reaction of beneficiaries, as expressed via Maximus' toll-free number, has been overwhelmingly favorable.

Through June 17, 2002, in the 13 States in Phase One<sup>1</sup> out of 1.15 million tickets mailed, 2,152 tickets have been assigned to State Vocational Rehabilitation agencies or Employment Networks.

**13. An effective quality assurance system is necessary, and the agency has talked about the need to revamp its quality review systems since 1994. Is anything being done, and if so can you describe what has been done?**

In April 2002, we formed the Quality Management Workgroup under the leadership of one of SSA's Senior Managers. The group was tasked with developing a proposal on what quality should look like for each of the Agency's business processes such as claims, post-entitlement actions, informing the public, enumeration, earnings and all support activities. The goal is to begin implementation by the end of FY 2002.

In developing the proposal, the workgroup has been gathering information through interviews with executives, background research from oversight groups, briefings on initiatives in process and focus groups with managers and employee associations. While the workgroup is still formulating the proposal, the areas identified for quality improvement include new in-line reviews in the disability and SSI programs, training initiatives, policy improvement processes and systems/management information enhancements.

Certain activities are already in process: plans for national automation training, new Program Service Center quality reviews, the acceleration of the electronic disability folder and process improvements that target SSI program issues. Working in conjunction with the responsible components, specific short, mid, and long-term activities in these areas will be identified, monitored and communicated throughout the Agency.

**14. Two of your agency's goals are to deliver customer-responsive world-class service and to make sure program management the best in the business, with zero tolerance for fraud and abuse. In your view, are these two goals being effectively balanced?**

Yes, these two goals represent the core business of our Agency and we are effectively balancing them. World-class service also includes sound stewardship.

Providing world-class service encompasses the full range of services that we provide the public in all our programs and through all modes of delivering that service—telephone, in-person, the Internet, automated self-service, mail and through third parties.

Making sure program management is the best in the business, with zero tolerance for fraud and abuse, includes our responsibility to pay benefits accurately and be a good steward of the money entrusted to us. To do this we establish and maintain records of individual's earnings for use in determining entitlement to benefits; make accurate eligibility and entitlement decisions, prevent, detect and collect overpayments; deter, identify and combat fraud; and ensure efficient operations.

To improve our service to the public and at the same time ensure that our program management is the best in the business, we have taken to significantly upgrade and refresh our systems infrastructure. Employee desktop computers are being replaced every 3 years. We are also upgrading our computer network, telecommunications and security infrastructure. Taken together, these enhancements not only allow us to better serve the public but also help us operate efficiently, make accurate decisions and detect fraud and abuse.

Further, we developed a Service Vision, which is our guide to how we will manage our work and provide service a decade from now and an Internet service delivery mechanism. The SSA's website, Social Security Online, provides the American public with one-stop shopping for information and services regarding our programs. Our Market Measurement Program routinely collects information from the public which helps us decide where to best focus our limited resources and make improvements in areas that will have the greatest public impact.

While doing all this we have initiated an aggressive antifraud program. This antifraud program 1) enhances our systems and operations to better detect fraud; 2) eliminates wasteful practices that erode public confidence in the Social Security program; and 3) vigorously prosecutes individuals or groups who damage the integrity of the programs.

<sup>1</sup>Because of the newness of the program and the time frames involved in the provision of employment supports, job placement and job retention, the Ticket assignment numbers should be viewed as very early indicators of outcomes to be expected over the initial Ticket roll-out.

The SSA's National Anti-Fraud Committee, under the leadership of top SSA executives, continues to oversee the implementation and coordination of SSA's strategies to eliminate fraud. Regional Anti-Fraud Committees coordinate antifraud strategies at each of our regional offices and identify new projects at the local level. Best practices are shared among the regional Committees and with the national committee.

Chairman SHAW. Thank you. Thank you very much.

The next panel, we have Barbara Bovbjerg, who is the Director of Education, Workforce and Income Security Issues, U.S. General Accounting Office, and she did a great job testifying before us down in Lakewood, Florida.

David McClure is the Director of Information Technology Management Issues at the U.S. General Accounting Office.

We also have the Honorable James Huse, the Inspector General of the Social Security Administration; the Honorable Hal Daub, particularly delighted to welcome him back to this Committee, a former Member of the Committee on Ways and Means, and now Chairman of the Social Security Advisory Board. This will be Hal's first time appearing before this Subcommittee.

We have Marie Smith, who is the President-Elect of the Board of Directors of AARP, and all of us in the Congress are very sensitive to the words coming from the AARP, so we certainly look forward to your testimony.

Marty Ford, who is the Co-Chair of the Social Security Task Force Consortium on Citizens with Disabilities, and also one of my favorites, the Honorable Barbara Kennelly, former Member of this Committee, former Ranking Member, I believe, of this Subcommittee, so we have to be careful what we ask her because she may know more about it than we do. She is now President of the National Committee to Preserve Social Security and Medicare.

You and I have had conversations over the years, when you were with the Clinton Administration, and we certainly look forward to hearing from you. Ms. Bovbjerg?

**STATEMENT OF BARBARA D. BOVBJERG, DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY ISSUES, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY DAVID L. MCCLURE, DIRECTOR, INFORMATION TECHNOLOGY MANAGEMENT ISSUES**

Ms. BOVBJERG. Thank you, Mr. Chairman.

Mr. Chairman, Members of the Committee, thank you for inviting me back before you, this time to discuss management challenges at the Social Security Administration. I am pleased the Agency can look to the experienced leadership of Commissioner Barnhart and look forward to working with her, and with you, in facing these challenges.

The SSA oversees programs that last year provided more than \$450 billion in benefits to more than 50 million recipients. As the administrator of these programs, SSA has shown many strengths. The Agency is considered a leader in Federal service delivery, and it has a long tradition of strategic planning. In addition, it produces timely and accurate financial statements and is a leader among government agencies in accountability reporting.

However, since 1995, when SSA became an independent Agency, GAO has called for sustained management attention to a relatively constant set of unresolved challenges. Although restoring solvency and sustainability to the Social Security programs themselves represents one of the major policy challenges facing our Nation, the challenges I will describe today are managerial in nature. My testimony is based on our previous and ongoing work, much of it performed for this Subcommittee.

Let me begin with the challenge of disability determination and appeals, which we heard a lot about this morning. As the Commissioner noted, the Agency has been working for years to improve its disability claims process, yet ensuring the quality and timeliness of its disability decisions remains one of its greatest challenges.

The SSA faces some difficult decisions about its next steps in this area and may need, in our view, to consider more fundamental changes to the process, rather than continuing to focus on changing its steps and procedures. At the same time, SSA should also seek to integrate return-to-work strategies into all phases of its disability determination process. While the Agency has taken some positive steps to return people with disabilities to work, a more comprehensive approach to the Agency's process and its underlying philosophy is needed.

Management and oversight problems in the SSI Program also continue to challenge the Agency. We labeled this program high risk in 1997 because of its susceptibility to fraud, waste, abuse, and mismanagement. Since that time, SSI has taken a number of steps to improve the integrity of the program. However, some of these actions are still in the early stages and have yet to yield significant results. We believe more can, and should, be done, including simplifying program requirements, which are often error prone and a major source of overpayments.

Future service delivery represents another challenge. Three factors pertain—as you noted, the expected increase in demand for services as the boomers retire, the imminent retirement of a large part of SSA's own workforce and changing customer expectations. These together have the potential to cripple SSA's service delivery system.

Even though SSA has several human capital initiatives underway to help it prepare its workforce for the future, it lacks a detailed plan for service delivery by that workforce. Absent a detailed blueprint, the Agency cannot ensure that its human capital efforts will fully support its vision for future service delivery and that it is effectively marshaling its resources.

Let me turn now to information technology, one of the greatest challenges for the Agency. The SSA is relying heavily on IT initiatives to cope with its growing workloads and plans increasingly to use web-based technologies to meet its service delivery goals and changing customer expectations. However, the Agency's past experience with IT initiatives has been mixed. As SSA transitions to electronic processes, it will be challenged to think more strategically about its IT investments and to ensure their effectiveness by linking them to service delivery goals and performance.

Finally, let me speak to the challenge of protecting personal information. In light of the terrorist events of September 11, the Na-

tion has a heightened awareness of the need to protect such information. The SSA will need to continue to take steps to ensure that only individuals who are eligible for Social Security numbers (SSN) receive them and to ensure that its information on deceased SSN holders is accurate and timely.

However, once SSA has issued a number to an individual, the Agency realistically has little control over how these numbers are used by other government agencies and by private sector entities. We will continue to work with SSA, this Subcommittee, and the Inspector General to better protect SSN's as part of our ongoing evaluation of this issue.

In conclusion, SSA has taken a number of steps to address its management challenges. However, the challenges remain, and the Agency is running out of time before expected workload increases overwhelm its operations. Although some of SSA's actions show promise, it is too early to tell how effective they will be and other actions SSA has taken have not produced the desired results. In almost all cases, the Agency has much more to do, and I welcome the energy and commitment that Commissioner Barnhart has shown in addressing these issues.

That concludes my statement. Mr. McClure, who is here from our IT side of GAO, and I would be happy to answer any questions.

[The prepared statement of Ms. Bovbjerg and Mr. McClure follow:]

**Statement of Barbara D. Bovbjerg, Director, Education, Workforce, and Income Security Issues, and David L. McClure, Director, Information Technology Management Issues, U.S. General Accounting Office**

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me here today to discuss the challenges facing the Social Security Administration (SSA). SSA oversees three major programs that in fiscal year 2001 provided more than \$450 billion in benefits to more than 50 million recipients. One or more of the three programs—Old Age and Survivors Insurance (OASI), Disability Insurance (DI), and Supplemental Security Income (SSI)—touches the lives of almost every American family at one time or another.

SSA has many strengths. The agency is considered to be a leader in federal service delivery, and it has a long tradition of strategic planning. In addition, SSA produces timely and accurate financial statements and is a leader among government agencies for its accountability reporting.

However, since 1995, when SSA became an independent agency, we have called for effective leadership and sustained management attention to a relatively constant set of unresolved management challenges.<sup>1</sup> These challenges include the need to redesign its disability claims process and heighten the focus on work for claimants, address management and oversight problems with its SSI program, meet its growing future service delivery demands, effectively implement its information technology initiatives, and strengthen its research and policy development capacity. Solutions to these challenges are difficult but necessary because they are linked to profound changes in our nation. The baby boom generation is nearing retirement age, people are living longer, technology and its applications are changing rapidly, and public expectations for faster and better service from government are growing. The

<sup>1</sup>See U.S. General Accounting Office, *SSA's Management Challenges: Strong Leadership Needed to Turn Plans Into Timely, Meaningful Action*, GAO/T-HEHS-98-113 (Washington, D.C.: Mar. 12, 1998); *Social Security Administration: Information Technology Challenges Facing the Commissioner*, GAO/T-AIMD-98-109 (Washington, D.C.: Mar. 12, 1998); *Social Security Administration: Significant Challenges Await New Commissioner*, GAO/HEHS-97-53 (Washington, D.C.: Feb. 20, 1997); *Social Security Administration: Effective Leadership Needed to Meet Daunting Challenges*, GAO/HEHS-96-196 (Washington, D.C.: Sept. 12, 1996); and *Social Security Administration: Leadership Challenges Accompany Transition to an Independent Agency*, GAO/HEHS-95-59 (Washington, D.C.: Feb. 15, 1995).

implications of these changes create some management challenges and make others more difficult to overcome.

Today, I will discuss SSA's progress in meeting these and other challenges. The information I am providing is based on our previous and ongoing work, much of it performed for these subcommittees. (See Related GAO Products at the end of this statement.)

In summary, SSA has taken a number of varied steps to address its management challenges; however, the challenges remain, and some are becoming ever more pressing. In certain instances, SSA's actions show promise, but it is too early to tell how effective they will be; in others, SSA's efforts have not produced the desired results. In almost all cases, the agency has much more to do and will likely need to take bolder action or make more fundamental changes to existing programs or procedures.

- SSA has been working for years to improve its disability claims process; yet, ensuring the quality and timeliness of its disability decisions remains one of the agency's greatest challenges. The agency faces some difficult decisions about its next steps in this area and may need to consider more fundamental changes to the process. In addition, although SSA has taken some positive steps to return people with disabilities to work, a more fundamental change to the agency's process and underlying philosophy is needed. Since 1996, we have called for SSA to integrate return-to-work strategies into all phases of its disability determination process to help disabled workers who can return to work to do so.
- In 1997, we designated the SSI program as high risk because of its susceptibility to fraud, waste, abuse, and mismanagement. Since that time, SSA has taken or begun to take a number of concrete and appropriate steps to improve the integrity of the program. However, some of these actions are still in the early stages and have yet to yield significant results. We believe more can be done, including moving forward on proposals to simplify program requirements, which are often error prone and a major source of SSI overpayments.
- The combination of three factors—the expected increase in demand for services as the baby boomers reach retirement age, the imminent retirement of a large part of the agencies workforce, and changing customer expectations—has the potential to cripple SSA's future service delivery system. Even though SSA has a number of human capital initiatives under way to help it prepare for the future, it lacks a service delivery plan that lays out a detailed blueprint for how service will be delivered in the future. Without such a plan, the agency cannot ensure that its human capital efforts fully will support its vision for service delivery and that it is effectively marshalling its scarce resources.
- SSA is relying heavily on information technology initiatives to cope with its growing workloads, and it plans to increasingly use Web-based technologies to meet its service delivery goals. For fiscal year 2001, SSA estimated spending about \$741 million on information technology systems and projects. Sound policies and procedures are fundamental to effectively managing information technology initiatives, and in a prior review, we found that SSA had not consistently implemented some key policies and procedures to guide its major information technology functions, including information security. Doing so is imperative, given that the agency has experienced mixed success in carrying out prior information technology initiatives.
- Regarding the need to strengthen its ability to conduct research and contribute to policy development, SSA is well positioned to contribute vital information to policymakers on the overarching problem of ensuring the long-term solvency of the Social Security Trust Funds. The agency also has a responsibility to review and identify other areas where policy changes are needed, such as in its disability programs. SSA has recently increased the level of staff and resources available to support these activities; however, many of the agency's efforts are in the early stages, and it is not yet clear how the agency will use them and what their ultimate effect on SSA program policy will be.
- Finally, in light of the terrorist events of September 11th, the nation has a heightened awareness of the need to protect sensitive information. SSA will need to continue to take steps to ensure that only individuals who are eligible for social security numbers (SSN) receive them and to ensure that its information on deceased SSN holders is accurate and timely. However, once SSA has issued an SSN to an individual, the agency has little control over how SSNs are used by other government agencies and the private sector. As we complete our review of how federal, state, and local programs and agencies

use SSNs and how well they protect them, we look forward to exploring with you additional options to better protect SSNs.

### **Background**

SSA administers three major federal programs. OASI and DI, together commonly known as Social Security, provide benefits to retired and disabled workers and their dependents and survivors. In fiscal year 2001, SSA provided OASI retirement benefits totaling more than \$369 billion to over 38 million individuals and DI benefits of more than \$59 billion to 6.8 million individuals. These benefits are paid from trust funds that are financed through payroll taxes paid by workers and their employers and by the self-employed. The third program, SSI, provides income for aged, blind, or disabled individuals with limited income and resources. In fiscal year 2001, 6.7 million individuals received almost \$28 billion in SSI benefits.<sup>2</sup> SSI payments are financed from general tax revenues.

To administer these programs, SSA must perform certain essential tasks. It must issue SSNs to individuals, maintain earnings records for individual workers by collecting wage reports from employers, use these records and other information to determine the amount of benefits an applicant may receive, and process benefit claims for all three programs.

To meet its customer service responsibilities, SSA operates a vast network of offices distributed throughout the country. These offices include approximately 1,300 field offices, which, among other things, take applications for benefits; 138 Offices of Hearings and Appeals; and 36 teleservice centers responsible for SSA's national 800 number operations.<sup>3</sup> The agency's policy is to provide customers with a choice in how they conduct business with SSA. Options include visiting or calling a field office, calling SSA's toll-free number, or contacting SSA through the mail or the Internet. To conduct its work, SSA employs almost 62,000 staff. In addition, to make initial and ongoing disability determinations, SSA contracts with 54 state disability determination service (DDS) agencies under authority of the Social Security Act.<sup>4</sup> Although federally funded and guided by SSA in their decision making, these agencies hire their own staff and retain a degree of independence in how they manage their offices and conduct disability determinations.<sup>5</sup> Overall, SSA relies extensively on information technology to support its large volumes of programmatic and administrative work.

The process for obtaining SSA disability benefits under either DI or SSI is complex, and multiple organizations are involved in determining whether a claimant is eligible for benefits. As shown in figure 1, the current process consists of an initial decision and as many as three levels of administrative appeals if the claimant is dissatisfied with SSA's decision.

---

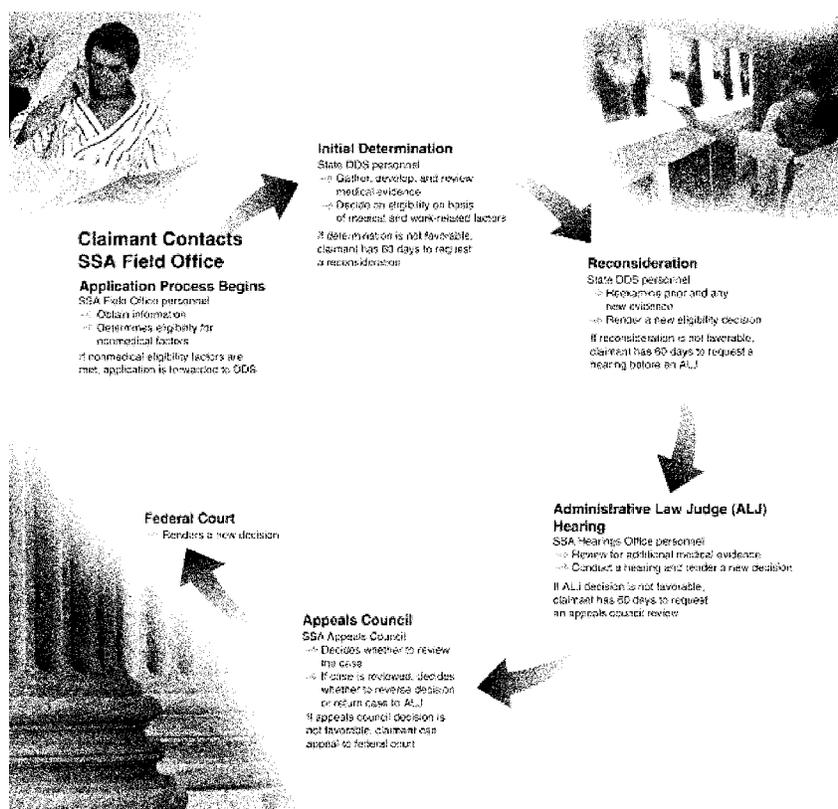
<sup>2</sup>Some DI and OASI benefit recipients have incomes low enough to qualify them for SSI, and they, therefore, receive benefits from both programs.

<sup>3</sup>Other SSA facilities include 10 regional offices, 7 processing centers, and 1 data operations center.

<sup>4</sup>These agencies exist in each state, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

<sup>5</sup>The state DDS sites employ a total of more than 14,000 staff.

Figure 1: SSA's Disability Claims Process



Each level of appeal involves multistep procedures for evidence collection, review, and decision making. Generally, a claimant applies for disability benefits at one of SSA's 1,300 field offices across the country. If the claimant meets certain nonmedical program eligibility criteria, the field office staff forward the claim to the DDS. DDS staff then obtain medical evidence about the claimant's impairment and determine whether the claimant is disabled. Claimants who are initially denied benefits can appeal by requesting the DDS to reconsider its initial denial. If the decision at the reconsideration level remains unfavorable, the claimant can request a hearing before a federal administrative law judge at an SSA hearings office and, if still dissatisfied, a review by SSA's appeals council. After exhausting these administrative remedies, the individual may file a complaint in federal district court.

The agency's ability to continue providing Social Security benefits over the long term is strained by profound demographic changes. The baby boom generation is nearing retirement age. In addition, life expectancy has increased continually since the 1930s, and further increases are expected. This increase in life expectancy, combined with falling fertility rates, mean that fewer workers will be contributing to Social Security for each aged, disabled, dependent, or surviving beneficiary. Beginning in 2017, Social Security's expenditures are expected to exceed its tax income. By 2041, without corrective action, experts expect the combined OASI and DI trust funds to be depleted, leaving insufficient funds to pay the current level of benefits. Unless actions are taken to reform the social security system, the nation will face continuing difficulties in financing social security benefits in the long term. Over the past few years, a wide array of proposals has been put forth to restore Social Security's long-term solvency, and in December 2001, a commission appointed by the president presented three alternative proposals for reform.

This solvency problem is part of a larger and significant fiscal and economic challenge facing our aging society. The expected growth in the Social Security program (OASI and DI), combined with even faster expected growth in Medicare and Medicaid, will become increasingly unsustainable over time, compounding an ongoing decline in budget flexibility. Absent changes in the structure of Social Security and Medicare, there would be virtually no room for any other budget priorities in future decades. Ultimately, restoring our long-term fiscal flexibility will involve reforming existing federal entitlement programs and promoting the saving and investment necessary for robust long-term economic growth.<sup>6</sup>

**Additional Progress Is Needed to Improve SSA's Disability Determination Process and to Return People to Work**

The disability determination process is time-consuming, complex, and expensive. Individuals who are initially denied benefits by SSA and appeal their claim experience lengthy waits for a final decision on their eligibility, and questions have been raised about the quality and consistency of certain disability decisions. Since 1994, SSA has introduced a wide range of initiatives intended to address long-standing problems with its disability claims process. However, the agency's efforts, in general, have not achieved the intended result, and the problems persist. Because SSA's DI and SSI programs are expected to grow significantly over the next decade, improving the disability determination process remains one of SSA's most pressing and difficult challenges requiring immediate and sustained attention from the new commissioner. Additionally, in redesigning its disability decision-making process, SSA still needs to incorporate into its eligibility assessment process an evaluation of what is needed for an individual to return to work. We have recommended developing a comprehensive return-to-work strategy that focuses on identifying and enhancing the work capacities of applicants and beneficiaries.

**Improvements to the Disability Determination Process Have Been Limited**

SSA's complex disability claims process has been plagued by a number of long-standing weaknesses that have resulted in lengthy waiting periods for claimants seeking disability benefits. For example, claimants who wish to appeal an initial denial of benefits frequently wait more than 1 year for a final decision. We have reported that these long waits result, in part, from complex and fragmented decision-making processes that are laden with many layers of reviews and multiple handoffs from one person to another. The cost of administering the DI and SSI programs reflects the demanding nature of the process. Although SSI and DI program benefits account for less than 20 percent of the total benefit payments made by SSA, they consume nearly 55 percent of annual administrative resources.

In addition to its difficulties in processing claims, SSA has also had difficulty ensuring that decisions about a claimant's eligibility for disability benefits are accurate and consistent across all levels of the decision-making process. For example, our work shows that in fiscal year 2000, about 40 percent of applicants whose cases were denied at the initial level appealed this decision and about two-thirds were awarded benefits. This happens in part because decision makers at the initial level use a different approach to evaluate claims and make decisions than those at the appellate level. The inconsistency of decisions at these two levels has raised questions about the fairness, integrity, and cost of SSA's disability programs.

In 1994, SSA laid out a plan to address these problems, yet that plan and three subsequent revisions in 1997, 1999, and 2001 have yielded only limited success. The agency's initial plan entailed a massive effort to redesign the way it made disability decisions. Among other things, SSA planned to develop a streamlined decision-making and appeal process, more consistent guidance and training for decision makers at all levels of the process, and an improved process for reviewing the quality of eligibility decisions. In our reviews of SSA's efforts after 2 years, 4 years, and again in 2001, we found that the agency had accomplished little.<sup>7</sup> In some cases, the plans were too large and too complex to keep on track, and the results of many of the initiatives that were tested fell far short of expectations. Moreover, the agency was

<sup>6</sup>For more information, see U.S. General Accounting Office, *Social Security: Issues in Evaluating Reform Proposals*, GAO-02-288T (Washington, D.C.: Dec. 10, 2001).

<sup>7</sup>U.S. General Accounting Office, *SSA Disability Redesign: Focus Needed on Initiatives Most Crucial to Reducing Costs and Time*, GAO/HEHS-97-20 (Washington, D.C.: Dec. 20, 1996); *SSA Disability Redesign: Actions Needed to Enhance Future Progress*, GAO/HEHS-99-25 (Washington, D.C.: Mar. 12, 1999); and *Social Security Disability: Disappointing Results From SSA's Efforts to Improve the Disability Claims Process Warrant Immediate Attention*, GAO-02-322 (Washington, D.C.: Feb. 27, 2002).

not able to garner consistent stakeholder support and cooperation for its proposed changes.

Despite the overall disappointing progress, the agency did experience some successes. For example, it conducted a large training effort to improve the consistency of decisions, which agency officials believe resulted in 90,000 eligible individuals' receiving benefits 500 days sooner than otherwise might have been the case over a 3-year period. In addition, the agency issued formal guidance in a number of areas intended to improve the consistency of decisions between the initial and appellate levels.

Overall, however, significant problems persist and difficult decisions remain. For example, SSA is currently collecting final data on the results from an initiative known as the Prototype, which was implemented in 10 states in October 1999. Although interim data indicated that the Prototype resulted in more awards at the initial decision level without compromising accuracy, it also indicated that the number of appeals would increase. This, in turn, would result in both higher administrative and benefit costs and lengthen the wait for final decisions on claims. As a result, SSA decided that the Prototype would not continue in its current form. Recently, SSA announced its "short-term" decision to revise some features of the Prototype to improve disability claims processing time while it continues to develop longer-term improvements. It remains to be seen whether these revisions will retain the positive results from the Prototype while also controlling administrative and benefit costs.

Even more pressing in the near term is the management and workload crisis that SSA faces in its hearings offices. The agency's 1999 plan included an initiative to overhaul operations at its hearing offices to increase efficiency and significantly reduce processing times at that level; however, this nationwide effort not only has failed to achieve its goals but, in some cases, has made things worse. The initiative has suffered, in part, from problems associated with implementing large-scale changes too quickly without resolving known problems. As a result, the average case-processing time slowed and backlogs of cases waiting to be processed approached crisis levels. We have recommended that the new commissioner act quickly to implement short-term strategies to reduce the backlog and develop a long-range strategy for a more permanent solution to the backlog and efficiency problems at the Office of Hearings and Appeals.<sup>8</sup> According to SSA officials, they have recently made some decisions on short-term initiatives to reduce the backlogs and streamline the process, and they are preparing to negotiate with union officials regarding some of these planned changes.

Finally, SSA's 1994 plan to redesign the claims process called for the agency to revamp its existing quality assurance system. However, because of disagreement among stakeholders on how to accomplish this difficult objective, progress in this area has been limited. In March 2001, a contractor issued a report assessing SSA's existing quality assurance practices and recommended a significant overhaul to encompass a more comprehensive view of quality management. We agreed with this assessment and recommended that SSA develop an action plan for implementing a more comprehensive and sophisticated quality assurance program.<sup>9</sup> Since then, the commissioner has signaled the high priority she attaches to this effort by appointing to her staff a senior manager for quality who reports directly to her. The senior manager is responsible for developing a proposal to establish a quality-oriented approach to all SSA business processes. The manager is currently assembling a team to carry out this challenging undertaking.

The disappointing results of some of these initiatives can be linked, in part, to slow progress in achieving technological improvements. As originally envisioned, SSA's plan to redesign its disability determination process was heavily dependent upon these improvements. The agency spent a number of years designing and developing a new computer software application to automate the disability claims process. However, SSA decided to discontinue the initiative in July 1999, after about 7 years, citing software performance problems and delays in developing the software.<sup>10</sup>

In August 2000, SSA issued a new management plan for the development of the agency's electronic disability system. SSA expects this effort to move the agency toward a totally paperless disability claims process. The strategy consists of several key components, including (1) an electronic claims intake process for the field of-

<sup>8</sup>GAO-02-322.

<sup>9</sup>GAO-02-322.

<sup>10</sup>U.S. General Accounting Office, Social Security Administration: Update on Year 2000 and Other Key Information Technology Initiatives, GAO/T-AIMD-99-259 (Washington, D.C.: July 29, 1999).

fices, (2) enhanced state DDS claims processing systems, and (3) technology to support the Office of Hearing and Appeals' business processes. The components are to be linked to one another through the use of an electronic folder that is being designed to transmit data from one processing location to another and to serve as a data repository, storing documents that are keyed in, scanned, or faxed. SSA began piloting certain components of its electronic disability system in one state in May 2000 and has expanded this pilot test to one more state since then. According to agency officials, SSA has taken various steps to increase the functionality of the system; however, the agency still has a number of remaining issues to address. For example, SSA's system must comply with privacy and data protection standards required under the Health Information Portability and Accountability Act, and the agency will need to effectively integrate its existing legacy information systems with new technologies, including interactive Web-based applications.

SSA is optimistic that it will meet its scheduled date for achieving a paperless disability claims process—anticipated for the end of 2005—and has taken several actions to ensure that its efforts support the agency's mission. For example, to better ensure that its business processes drive its information technology strategy, SSA has transferred management of the electronic disability strategy from the Office of Systems to the Office of Disability and Income Security Programs. In addition, SSA hired a contractor to independently evaluate the electronic disability strategy and recommend options for ensuring that the effort addresses all of the business and technical issues required to meet the agency's mission. According to an agency official, SSA is currently implementing the contractor's recommendations. As SSA proceeds with this new system, however, it is imperative that the agency effectively identify, track, and manage the costs, benefits, schedule, and risks associated with the system's full development and implementation. Moreover, SSA must ensure that it has the right mix of skills and capabilities to support this initiative and that desired end results are achieved.

Overall, SSA is at a crossroads in its efforts to redesign and improve its disability claims process. It has devoted significant time, energy, and resources to its redesign initiatives over the last 7 years, yet progress has been limited and often disappointing. SSA is not the only government agency to experience difficulty in overhauling or reengineering its operations. According to reengineering experts, many federal, state, and local agencies have failed in similar efforts. Frequent leadership turnover, constraints on flexibility posed by laws and regulations, and the fact that government agencies often must serve multiple stakeholders with competing interests all constrain progress. Yet, it is vital that SSA address its claims process problems now, before the agency experiences another surge in workload as the baby boomers reach their disability-prone years. To date, the focus on changing the steps and procedures of the process or changing the duties of its decision makers has not been successful. Given this experience, it may be appropriate for the agency to undertake a new and comprehensive analysis of the fundamental issues impeding progress. Such an analysis might include reassessing the root causes contributing to its problems and would encompass concerns raised by the Social Security Advisory Board, such as the fragmentation and structural problems in the agency's overall disability service delivery system. The outcome of this analysis may, in some cases, require legislative changes.

### **SSA Lacks a Comprehensive Strategy to Return People with Disabilities to Work**

The number of working-age beneficiaries of the DI and SSI programs has increased by 61 percent over the past 10 years. We have reported that as the beneficiary population has grown, numerous technological and medical advances, combined with changes in society and the nature of work, have increased the potential for some people with disabilities to return to, or remain in, the labor force. Also, legislative changes have focused on returning disabled beneficiaries to work. The Americans with Disabilities Act of 1990 supports the premise that people with disabilities can work and have the right to work, and the Ticket to Work and Work Incentives Improvement Act of 1999 increased beneficiaries' access to vocational services. Indeed, many beneficiaries with disabilities indicate that they want to work, and many may be able work in today's labor market if they receive needed support. In 1996, we recommended that SSA place a greater priority on helping disabled beneficiaries work, and the agency has taken a number of actions to improve its return-to-work practices. But even with these actions, SSA has achieved poor results in this arena, where fewer than 1 in 500 DI beneficiaries and few SSI beneficiaries leave the disability rolls to work.

Even in light of the Ticket to Work Act, SSA will continue to face difficulties in returning beneficiaries to work, in part owing to weaknesses, both statutory and

policy, in the design of the DI program. As we have reported in the past, these weaknesses include an either/or disability decision-making process that characterizes individuals as either unable to work or having the capacity to work. This either/or process produces a strong incentive for applicants to establish their inability to work to qualify for benefits.

Moreover, return-to-work services are offered only after a lengthy determination process. Because applicants are either unemployed or only marginally connected to the labor force at the time of application and remain so during the eligibility determination process, it is likely that their skills, work habits, and motivation to work deteriorate during this wait. Thus, individuals who have successfully established their disability may have little reason or desire to attempt rehabilitation and work. Unlike some private sector disability insurers and foreign social insurance systems, SSA does not incorporate into its initial or continuing eligibility assessment process an evaluation of what is needed for an individual to return to work. Instead of receiving assistance to stay in the workforce or return to work—and thus to stay off the long-term disability rolls—an individual can obtain assistance through DI or SSI only by proving his or her inability to work. And even in its efforts to redesign the decision-making process, SSA has yet to incorporate into these initiatives an evaluation of what an individual may need to return to work.

Moreover, SSA has made limited strides in developing baseline data to measure progress in the return-to-work area. In June 2000, we reported that many of SSA's fiscal year 2001 performance measures were not sufficiently results oriented, making it difficult to track progress. SSA's fiscal year 2002 performance plan shows that SSA has begun to incorporate more outcome-oriented performance indicators that could support their efforts in this area. Two new indicators, in particular, could help SSA gauge progress: the percentage increase in the number of DI beneficiaries whose benefits are suspended or terminated owing to employment and the percentage increase in the number of disabled SSI beneficiaries no longer receiving cash benefits. However, SSA has not yet set specific performance targets for these measures.

Nevertheless, SSA has recently stepped up its return-to-work efforts. For example, it has (1) established an Office of Employment Support Programs to promote employment of disabled beneficiaries; (2) recruited 184 public or private entities to provide vocational rehabilitation, employment, and other support services to beneficiaries under the Ticket to Work Program; (3) raised the limit on the amount a DI beneficiary can earn from work and still receive benefits to encourage people with disabilities to work; (4) funded 12 state partnership agreements that are intended to help the states develop services to increase beneficiary employment; and (5) completed a pilot study on the deployment of work incentive specialists to SSA field offices and is currently determining how to best implement the position nationally.

While these efforts represent positive steps in trying to return people with disabilities to work, much remains to be done. As we have recommended previously, SSA still needs to move forward in developing a comprehensive return-to-work strategy that integrates, as appropriate, earlier intervention, including earlier and more effective identification of work capacities, and the expansion of such capacities by providing essential return-to-work assistance for applicants and beneficiaries. Adopting such a strategy is likely to require improvements to staff skill levels and areas of expertise, as well as changes to the disability determination process. It will also require fundamental changes to the underlying philosophy and direction of the DI and SSI programs, as well as legislative changes in some cases. Policymakers will need to carefully weigh the implications of such changes. Nevertheless, we remain concerned that the absence of such a strategy and accompanying performance plan goals may hinder SSA's efforts to make significant strides in the return-to-work area. An improved return-to-work strategy could benefit both the beneficiaries who want to work and the American taxpayer.

### **Longstanding High-Risk SSI Issues Require Sustained Management and Oversight**

The SSI program is the nation's largest cash assistance program for the poor. In fiscal year 2000, the program paid 6.6 million low-income aged, blind, and disabled recipients \$31 billion in benefits. During that year, newly detected overpayments and outstanding SSI debt totaled more than \$3.9 billion. In 1997, after several years of reporting on specific instances of abuse and mismanagement, increasing overpayments, and poor recovery of outstanding SSI debt, we designated SSI a high-risk program. The SSI program poses a special challenge for SSA because, unlike OASI and DI, it is a means-tested program; thus, SSA must collect and verify information on income, resources, and recipient living arrangements to determine initial and

continuing eligibility for the program. Our prior work, however, shows that SSA has often placed a greater priority on quickly processing and paying SSI claims with insufficient attention to verifying recipient self-reported information, controlling program expenditures, and pursuing overpayment recoveries once they occur.

In response to our high-risk designation, SSA has made progress in coordination with Congress to improve the financial integrity and management of SSI, including developing a major SSI legislative proposal with numerous overpayment deterrence and recovery provisions. Many of these provisions were incorporated into the Foster Care Independence Act, which was signed into law in December 1999. The act directly addresses a number of our prior recommendations and provides SSA with additional tools to obtain applicant income and resource information from financial institutions; imposes a period of ineligibility for applicants who transfer assets to qualify for SSI benefits; and authorizes the use of credit bureaus, private collection agencies, interest levies, and other means to recover delinquent debt. SSA also obtained separate legislative authority in 1998 to recover overpayments from former SSI recipients currently receiving OASI or DI benefits. The agency was previously excluded from using this cross-program recovery tool to recover SSI overpayments without first obtaining debtor consent. As a result of this new authority, SSA has recently begun the process of recovering overpayments from Social Security benefits of individuals no longer on the SSI rolls. The agency has also issued regulations on the use of credit bureaus and drafted regulations for wage garnishments. We have been told that the draft regulations are currently under review by the new commissioner and by the Office of Management and Budget.

In addition to establishing the new legislative authorities, SSA has initiated a number of internal administrative actions to further strengthen SSI program integrity. These include using tax refund offsets for delinquent SSI debtors, an action that SSA said resulted in \$61 million in additional overpayment recoveries last year. SSA also uses more frequent (monthly) automated matches to identify ineligible SSI recipients living in nursing homes and other institutions. As of January 2001, SSA's field offices were also provided on-line access to wage, new-hire, and unemployment insurance data maintained by the Office of Child Support Enforcement. These data are key to field staff's ability to more quickly verify employment and income information essential to determining SSI eligibility and benefit levels. SSA also increased the number of SSI financial redeterminations that it conducted, from about 1.8 million in fiscal year 1997 to about 2.2 million in fiscal year 2000. These reviews focus on income and resource factors affecting eligibility and payment amounts. SSA estimates that by conducting more redeterminations and refining its methodology for targeting cases most likely to have payment errors, it prevented nearly \$600 million in additional overpayments in fiscal year 1999.

SSA's Office of Inspector General (OIG) has also increased the level of resources and staff devoted to investigating SSI fraud and abuse; key among the OIG's efforts is the formation of Cooperative Disability Investigation teams in 13 field locations. These teams are designed to identify fraud and abuse before SSI benefits are approved and paid. Finally, in response to our prior recommendation, SSA has revised its field office work credit and measurement system to better reward staff for time spent thoroughly verifying applicant eligibility information and developing fraud referrals. If properly implemented, such measures should provide field staff with much-needed incentives for preventing fraud and abuse and controlling overpayments.

SSA's current initiatives demonstrate a stronger management commitment to SSI integrity issues and have the potential to significantly improve program management; however, our work shows that SSA overpayments and outstanding debt owed to the program remain at high levels. A number of the agency's initiatives—especially those associated with the Foster Care Independence Act—are still in the early planning or implementation stages and have yet to yield results. In addition, at this stage, it is not clear how great an effect the impact of SSA's enhanced matching efforts, online access tools, and other internal initiatives has had on the agency's ability to recover and avoid overpayments. The same is true for the agency's efforts to improve the accuracy of SSI eligibility decisions.

SSA also has not yet addressed a key program vulnerability—program complexity—that is associated with increased SSI overpayments. In prior work, we have reported that SSI living arrangement and in-kind support and maintenance policies used by SSA to calculate eligibility and benefit amounts were complex, prone to error, and a major source of overpayments. We also recommended that SSA develop options for simplifying the program. Last year, SSA's policy office issued a study that discussed various options for simplifying complex SSI policies. Although SSA is considering various options, it has not moved forward in recommending specific cost neutral proposals for change.

We believe that sustained management attention is necessary to improve SSI program integrity. Thus, it is important that SSA move forward in fully implementing the overpayment deterrence and recovery tools currently available to it and seek out additional ways to improve program management. Accordingly, we have a review under way that is aimed at documenting the range of SSI activities currently in place; their effects on program management and operations; and additional legislative or administrative actions, or both, necessary to further improve SSA's ability to control and recover overpayments. A particular focus of this review will be to assess remaining weaknesses in SSA's initial and ongoing eligibility verification procedures, application of penalties for individuals who fail to report essential eligibility information, and overpayment recovery policies.

### **SSA Lacks a Plan to Help It Cope with Future Service Delivery Challenges**

Among federal agencies, SSA has long been considered one of the leaders in service delivery. Indeed, for fiscal year 2001, SSA reported that 81 percent of its customers rated the agency's services as "excellent," "very good," or "good." SSA considers service delivery one of its top priorities, and its current performance plan includes specific goals and strategies to provide accurate, timely, and useful service to the public. However, the agency faces significant challenges that could hamper its ability to provide high-quality service over the next decade and beyond. Demand for services will grow rapidly as the baby boom generation ages and enters the disability-prone years. By 2010, SSA expects worker applications for DI to increase by as much as 32 percent over 2000 levels. Determining eligibility for disability benefits is a complex process that spans a number of offices and can take over a year to complete. As we have observed earlier in this statement, SSA already has trouble managing its disability determination workload; adding additional cases without rectifying serious case processing issues will only make things worse. Furthermore, by 2010, SSA projects that applications for retirement benefits will also increase dramatically—by 31 percent over the 2000 levels.

SSA's ability to provide high-quality service delivery is also potentially weakened by challenges regarding its workforce. First, SSA's workforce is aging, and SSA is predicting a retirement wave that will peak in the years 2007 through 2010, when it expects about 2,500 employees to retire each year. By 2010, SSA projects that about 37 percent of its almost 62,000 employees will retire. The percentage is higher for employees in SSA's supervisory or managerial ranks. In particular, more than 70 percent of SSA's upper-level managers and executives (GS-14, GS-15, and SES level) are expected to retire by 2010. Second, SSA will need to increase staff skills to deal with changing customer expectations and needs. SSA's staff will need to obtain and continually update the skills needed to use the most current technology available to serve the public in a more convenient, cost effective, and secure manner. At the same time, some aspects of SSA's customer service workload will likely become more time consuming and labor intensive, owing primarily to the growing proportion of SSA's non-English speaking customers and the rising number of disability cases involving mental impairments. Both situations result in more complex cases that require diverse staff skills.

SSA has a number of workforce initiatives under way to help it prepare for the future. For example, as we recommended in 1993, and as required by law, SSA developed a workforce transition plan to lay out actions to help ensure that its workforce will be able to handle future service delivery challenges. In addition, recognizing that it will shortly be facing the prospect of increasing retirements, SSA conducted a study that predicts staff retirements and attrition each year, from 1999 to 2020, by major job position and agency component. SSA also began to take steps to fill its expected leadership gap. We have long stressed the importance of succession planning and formal programs to develop and train managers at all levels of SSA. As early as 1993, we recommended that SSA make succession planning a permanent aspect of its human resource planning and evaluate the adequacy of its investments in management training and development. SSA created three new leadership development programs to help prepare selected staff to assume mid- and top-level leadership positions at the agency. Overall, many of the efforts being made today are consistent with principles of human capital management, and good human capital management is fundamental to the Federal Government's ability to serve the American people. For this reason, we have designated strategic human capital management a high-risk area across the Federal Government.<sup>11</sup>

However, SSA is taking these human capital measures in the absence of a concrete service delivery plan to help guide its investments. We recommended as long

<sup>11</sup>U.S. General Accounting Office, Major Management Challenges and Program Risks: A Governmentwide Perspective, GAO-01-241 (Washington, D.C.: Jan. 2001).

ago as 1993 that SSA complete such a plan to ensure that its human capital and other key investments are put to the best use.<sup>12</sup> In 1998, the agency took a first step by beginning a multiyear project to monitor and measure the needs, expectations, priorities, and satisfaction of customer groups, major stakeholders, and its workforce. In 2000, SSA completed a document that articulates how it envisions the agency functioning in the future.<sup>13</sup> For example, SSA anticipates offering services in person, over the telephone, and via the Internet; its telephonic and electronic access services will be equipped with sophisticated voice recognition and language translation features, and work will be accomplished through a paperless process. In this service vision document, SSA also states that it will rely heavily on a workforce with diverse and updated skills to accomplish its mission. Although this new vision represents a positive step for the agency toward acknowledging and preparing for future service delivery challenges, it is too broad and general to be useful in making specific information technology and workforce decisions. We have stressed that this document should be followed by a more detailed service delivery plan that spells out who will provide what type of services in the future, where these services will be made available, and the steps and timetables for accomplishing needed changes. SSA officials told us that they are working on such a blueprint. Without this plan, SSA cannot ensure that its investments in its workforce and technology are consistent with and fully support its future approach to service delivery.

#### **SSA's Future Success Is Linked to Effectively Managing Information Technology Initiatives**

SSA also plans to rely heavily on information technology to cope with growing workloads and to enhance its processing capabilities. To this end, the agency has devoted considerable time and effort to identifying strategies to meet its goal of providing world-class service. For example, SSA has begun expanding its electronic service delivery capability—offering retirees the option of applying for benefits on-line as well as pursuing other on-line or Internet options to facilitate customer access to the agency's information and services. Yet, SSA's overall success in meeting its service delivery challenge will depend on how effectively it manages its information technology initiatives. As SSA transitions to electronic processes, it will be challenged to think strategically about its information technology investments and to effectively link these investments to the agency's service delivery goals and performance. Furthermore, its actions and decisions must effectively address dual modes of service delivery—its traditional services via telephone, face-to-face, and mail contacts that are supported primarily by its mainframe computer operations, as well as a more interactive, on-line, Web-based environment aimed at delivering more readily accessible services in response to increased customer demands.

SSA has experienced mixed success in carrying out prior information technology initiatives. For example, the agency has made substantial progress in modernizing workstations and local area networks to support its work processes, and it has clearly defined its business needs and linked information technology projects to its strategic objectives. Moreover, our evaluation of its information technology policies, procedures, and practices in five key areas—investment management, enterprise architecture, software development and acquisition, human capital, and information security—found that SSA had many important information technology management policies and procedures in place.<sup>14</sup> For instance, SSA had sound policies and procedures for software development that were consistent with best practices.

However, SSA had not implemented its policies and procedures uniformly and had not established several key policies and procedures essential to ensuring that its information technology investments and human capital were effectively managed. We noted weaknesses in each of the five key areas and recommended actions to improve SSA's information technology management practices in each area. In total, our report included 20 specific recommendations for more effectively managing the agency's information technology. In responding to our report, SSA agreed with all of the recommendations.

Let me illustrate some of the weaknesses that formed the basis for our recommendations. In making decisions on technology projects, SSA lacked key criteria and regular oversight for ensuring consistent investment management and decision-making practices. It also did not always consider costs, benefits, schedules, and

<sup>12</sup>U.S. General Accounting Office, Social Security: Sustained Effort Needed to Improve Management and Prepare for the Future, GAO/HRD-94-22 (Washington, D.C.: Oct. 27, 1993). Also, see GAO/T-HEHS-98-113 and GAO/HEHS-96-196.

<sup>13</sup>This document was originally called "2010 Vision" but subsequently was renamed "SSA's Service Vision."

<sup>14</sup>U.S. General Accounting Office, Information Technology Management: Social Security Administration Practices Can Be Improved, GAO-01-961 (Washington, D.C.: August 21, 2001).

risks when making project selections and as part of its ongoing management controls. Without such information, SSA cannot be assured that its investment proposals will provide the most cost-effective solutions and achieve measurable and specific program-related benefits (e.g., high-quality service delivered on time, within cost, and to the customer's satisfaction). Furthermore, given competing priorities and funding needs, SSA will need such information to make essential tradeoffs among its information technology investment proposals and set priorities that can maximize the potential for both short- and longer-term improvements to services provided to the public.

As SSA pursues Internet and Web-based applications to better serve its customers, it must ensure that these efforts are aligned with the agency's information technology environment. A key element for achieving this transition is the successful implementation of SSA's enterprise architecture. An enterprise architecture serves as a blueprint for systematically and completely defining an organization's current (baseline) and desired (target) environment and is essential for evolving information systems, developing new systems, and inserting emerging technologies that optimize their mission value. It also provides a tool for assessing benefits, impacts, and capital investment measurements and supporting analyses of alternatives, risks, and trade-offs. Nonetheless, we found that SSA had not completed key elements of its enterprise architecture, including (1) finalizing its enterprise architecture framework, (2) updating and organizing its architectures and architecture definitions under the framework, and (3) reflecting its future service delivery vision and e-business goals. In addition, it had not ensured that enterprise architecture change management and legacy system integration policies, procedures, and processes were effectively implemented across the agency.

As SSA moves forward in implementing electronic services and other technologies, its architecture will be critical to defining, managing, and enforcing adherence to the framework required to support its current and future information processing needs. Moreover, without effective enterprise architecture change management and legacy system integration processes, SSA will lack assurance that (1) it can successfully manage and document changes to its architecture as business functions evolve and new technologies are acquired and (2) new software and hardware technologies will interoperate with existing systems in a cost-effective manner. In surveying 116 agencies across the Federal Government, we found the use of enterprise architectures to be a work in progress, with much left to be accomplished.<sup>15</sup> We assessed SSA at a relatively low level of maturity in enterprise architecture management.

SSA plans to rely extensively on software-intensive systems to help achieve processing efficiencies and improved customer service. Because SSA is an agency in which software development continues to be predominantly an in-house effort, in 1997, its Office of Systems established the Software Process Improvement program, in which new policies and procedures were created to enhance the quality of the agency's software development. However, our evaluation of these policies and procedures found that SSA was not consistently applying them to its software development projects. In particular, SSA had not applied sound management and technical practices in its development of the electronic disability system. This poses a significant risk given SSA's history of problems in developing and delivering the critical software needed to support its redesigned work processes.<sup>16</sup> The use of sound, disciplined software development processes is critical to ensuring that SSA delivers quality software on schedule and within established cost estimates. Until SSA consistently and effectively implements its software development policies and procedures, it will lack assurance that it can meet its goal of developing a technological infrastructure to support its service delivery vision.

As SSA places increased emphasis on using information technology to support new ways of delivering service, it must ensure that it effectively manages its human capital to anticipate, plan for, and support its information technology requirements. However, SSA had not taken all of the necessary steps to ensure the adequacy of its future information technology workforce. For instance, we found that although SSA had begun evaluating its short- and longer-term information technology needs, these efforts were not complete. Specifically, SSA had not linked its information technology staff needs to the competencies it would require to meet mission goals. Doing so is necessary, however, to ensure that SSA's plans project workforce needs far enough in advance to allow adequate time for staff recruitment and hiring, skills refreshment and training, or outsourcing considerations. Furthermore, SSA lacked an inventory identifying the knowledge and skills of current information technology

<sup>15</sup> U.S. General Accounting Office, *Information Technology: Enterprise Architecture Use Across the Federal Government Can Be Improved*, GAO-02-6 (Washington, D.C.: Feb. 19, 2002).

<sup>16</sup> GAO/T-AIMD-99-259.

staff, which is essential for uncovering gaps between current staff and future requirements. Without such an inventory, SSA has no assurance that its plans for hiring, training, and professionally developing information technology staff will effectively target short- and long-term skills needed to sustain its current and future operations. These shortcomings in SSA's information technology human capital management could have serious ramifications as the agency moves toward making larger investments in new electronic service delivery options, such as Internet applications. Developing Internet applications represents a new era for SSA—one in which the agency must ensure that it has enough of the right people and skills to bring its electronic service delivery plan to fruition.

As SSA proceeds with the development and implementation of Internet and Web-based initiatives, the need for a strong program to address threats to the security and integrity of its operations will grow. Without proper safeguards, these initiatives pose enormous risks that make it easier for individuals and groups with malicious intentions to intrude into inadequately protected systems and use such access to obtain sensitive information, commit fraud, disrupt operations, or launch attacks against other organizations' sites.

SSA has made progress in addressing the information protection issues raised in prior years. Specifically, during fiscal year 2001, the agency

- conducted a risk assessment to identify critical assets and vulnerabilities as part of the Critical Infrastructure Protection project;
- issued a final security policy for the state Disability Determination Service sites in accordance with the information security requirements included in the National Institute of Standards and Technology Special Publication 800-18;
- established and published technical security configuration standards for operating systems and servers;
- completed updates for accreditation and certification of key systems; and
- further strengthened physical access controls over the National Computer Center.

Nonetheless, weaknesses in SSA's information security program continue to threaten its ability to effectively mitigate the risk of unauthorized access to, and disclosure of, sensitive information. For example, although the agency has made improvements to its entity-wide security program and standards, control weaknesses continue to expose key elements of its distributed systems and networks to unauthorized access to sensitive data. The general areas where exposures occurred included implementation, enforcement, and ongoing monitoring of compliance with technical security configuration standards and rules governing the operation of firewalls; monitoring controls over security violations and periodic reviews of user access; and physical access controls at nonheadquarters locations. These exposures exist primarily because SSA has not completed implementation of its enterprise-wide security program.

Until a complete security framework is implemented and maintained, SSA's ability to effectively mitigate the risk of unauthorized access to, and modification or disclosure of, sensitive SSA data will be impaired. Unauthorized access to sensitive data can result in the loss of data as well as trust fund assets, and compromised privacy of information associated with SSA's enumeration, earnings, benefit payment processes, and programs. The need for a strong security framework to address threats to the security and integrity of SSA operations will grow as the agency continues to implement Internet and Web-based applications to serve the American public.

#### **Program Challenges Require SSA to Play an Active Role in Research, Evaluation, and Policy Development**

In the past, we have reported that SSA has not undertaken the range of research, evaluation, and policy analysis necessary (1) to identify areas where legislative or other changes are needed to address program weaknesses and (2) to assist policymakers in exploring and developing options for change.

The long-term solvency of the Social Security system is a critical issue facing the nation and SSA. As the debate on Social Security reform proceeds, policymakers and the general public need thoughtful, detailed, and timely analyses of the likely effect of different proposals on workers, beneficiaries, and the economy. SSA is well positioned to assess the programmatic impacts of economic and demographic trends and to identify areas where policy changes are needed to ensure that recipients' needs are met efficiently and cost effectively.

At the same time, SSA needs to prepare for the implementation of whatever programmatic changes are eventually made. Many of the reform proposals currently

under debate will likely affect not only SSA but other government agencies as well. As part of their debate, policymakers need to understand the administrative aspects of each proposal, including the amount of time and money necessary to implement the proposed changes. SSA has information that could be central to the implementation and administration of proposed Social Security reforms and should be providing this information in a timely and accurate manner.

SSA also faces a wide range of pressing challenges with its disability programs, including how best to 1) ensure the quality and timeliness of its decisions, 2) integrate return-to-work strategies into all phases of its disability determination process, and 3) address program complexity problems that have contributed to vulnerability in the SSI program. To address these challenges, SSA will need to target its research and conduct analyses that will allow the agency to play a key role in proposing and analyzing major policy changes. However, in the past, we have noted SSA's reluctance to take the actions needed to fulfill its policy development and planning role in advance of major program crises, particularly when they require long-term solutions, legislative change, or both.

In recent years, SSA has taken action to strengthen its research and policy development role in these and other areas. It has initiated several reorganizations of its policy component to strengthen its capacity. The agency has also significantly increased the level of staff and resources available to support research activities and has several analyses planned or under way to address key policy issues. Specific to the long-term solvency issue, SSA's Office of the Actuary has long provided key information on the financial outlook of Social Security and projections of the effects of different reform proposals on trust fund finances. In addition, SSA has expanded its ability to use modeling techniques to predict the effects of proposed program changes, and it has established a research consortium to conduct and advise on relevant research and policy activities. With respect to its disability programs, SSA has established a separate disability research institute and has submitted to the Congress its first major SSI legislative proposal aimed at improving program integrity. However, many of the agency's actions and studies are in the early stages, and it is not yet clear how the agency will use them and what their ultimate effect on SSA program policy will be.

#### **The Need to Protect Personal Information Has Gained New Urgency**

The Social Security Administration is responsible for issuing SSNs to most Americans.<sup>17</sup> The agency relies on the SSN to record wage data, maintain earnings records, and efficiently administer its benefit programs. In addition, the SSN is used by other government agencies as well as the private sector. This widespread use offers many benefits; however, combined with an increase in reports of identity theft, it has raised public concern over how this and other personal information is being used and protected. Moreover, the growth of the Internet, which can make personal information contained in electronic records more readily accessible to the general public, has heightened this concern. Finally, the terrorist attacks of September 11th and the indication that some of the terrorists fraudulently obtained SSNs have added new urgency to the need to assess how SSNs are used and protected.

We have recently testified on work we are completing at the request of Chairman Shaw and others to review the many uses of SSNs at all levels of government and to assess how these government entities safeguard the SSNs.<sup>18</sup> We found that SSNs are widely used across multiple agencies and departments at all levels of government. They are used by agencies that deliver benefits and services to the public as a convenient and efficient means of managing records. More importantly, these agencies rely on SSNs when they share data with one another, for example, to make sure that only eligible individuals receive benefits and to collect outstanding debt individuals owe the government. Although these agencies are taking steps to safeguard the SSNs from improper disclosure, our work identified potential weaknesses in the security of information systems at all levels of government. In addition, SSNs are widely found in documents that are routinely made available to the public, that is, in public records. Although some government agencies and courts are trying innovative approaches to prevent the SSN from appearing on public records, not all agencies maintaining public records have adopted these approaches. Moreover, increasing numbers of departments are considering placing or planning to place docu-

<sup>17</sup> Since 1982, SSA has provided SSNs only to U.S. citizens, noncitizens authorized to work in the United States, and noncitizens with an approved nonwork reason for needing a number.

<sup>18</sup> U.S. General Accounting Office, *SSNs Are Widely Used by Government and Could Be Better Protected*, GAO-02-619T (Washington, D.C.: Apr. 29, 2002).

ments that may contain SSNs on the Internet, which would make these numbers much more readily available to others, raising the risk of their misuse.

We also found that SSNs are one of three personal identifiers most often sought by identity thieves and that SSNs are often used to generate additional false documents, which can be used to set up false identities. What is harder to determine is a clear answer on where identity thieves obtain the SSNs they misuse. Ultimately, in light of the recent terrorist events, the nation must grapple with the need to find the proper balance between the widespread and legitimate uses of personal information such as SSNs, by both government and the private sector, and the need to protect individual privacy.

There are no easy answers to these questions, but SSA has an important role to play in protecting the integrity of the SSN. Given the widespread use of SSNs, the agency needs to take steps to ensure that it is taking all necessary precautions to prevent individuals who are not entitled to SSNs from obtaining them. Currently, the agency is reexamining its process of assigning SSNs to individuals. This may require the agency to find a new balance between two competing goals: the need to take time to verify documents submitted during the application process and the desire to serve the applicant as quickly as possible. In addition, the agency is studying ways to make sure it provides accurate and timely information to financial institutions on deceased SSN holders. However, once SSA has issued an SSN, it has little control over how the number is used by other government agencies and the private sector. In this light, we look forward to exploring additional options to better protect SSNs with you as we complete our ongoing work in this area.

#### **Concluding Observations**

We have outlined a number of difficult challenges, most of them long-standing, that the SSA Commissioner faces. These are, in general, the same challenges we have been highlighting since SSA became an independent agency. In some cases, SSA has begun to take positive steps to address its challenges. Specifically, SSA's efforts to strengthen its research, evaluation, and policy development activities show promise. Likewise, SSA has made considerable progress in addressing weaknesses in the integrity of the SSI program. However, more can be done in these areas. As new pressures inevitably arise that will also demand attention from the commissioner and her team, it will be important for the commissioner to sustain and expand on the agency's actions to date.

We are particularly concerned, however, about other challenges where SSA's efforts to date have fallen short and where the agency faces increasing pressures in the near future. The commissioner faces crucial decisions on how to proceed on several of these challenges. SSA has made disappointing progress on (1) its efforts to improve its disability claims process, (2) the need to better integrate return-to-work strategies into all phases of the disability process, and (3) the need to better plan for future service delivery pressures and changes. These challenges will be exacerbated by growing workload pressures as the baby boom generation ages. After almost a year without a long-term leadership structure in place, the commissioner and a SSA team have an opportunity to take a fresh look at these longstanding challenges and the fundamental issues impeding faster progress in these areas. Again, focused and sustained attention to these challenges is vital, as the agency is running out of time to make needed changes before the expected increases in workload overwhelm its operations.

Mr. Chairman, this concludes my statement. I would be pleased to respond to any questions that you or other member of the subcommittees may have.

#### **Contacts and Acknowledgments**

For further information regarding this testimony, please contact Barbara D. Bovbjerg, Director, or Kay E. Brown, Assistant Director, Education, Workforce, and Income Security at (202) 512-7215. Individuals making key contributions to this testimony include Michael Alexander, Yvette Banks, Daniel Bertoni, Alicia Puente Cackley, Ellen Habenicht, Carol Langelier, Valerie Melvin, Angela Miles, Carol Dawn Petersen, and William Thompson.

#### **Related GAO Products**

##### **Social Security Reform**

*Social Security: Issues in Evaluating Reform Proposals.* GAO-02-288T. Washington, D.C.: December 10, 2001.

*Social Security: Program's Role in Helping Ensure Income Adequacy.* GAO-02-62. Washington, D.C.: November 30, 2001.

*Social Security: Evaluating Reform Proposals.* GAO/AIMD/HEHS-00-29. Washington, D.C.: November 4, 1999.

*SSA's Management Challenges: Strong Leadership Needed to Turn Plans Into Timely, Meaningful Action.* GAO/T-HEHS-98-113. Washington, D.C.: March 12, 1998.

#### **Social Security Disability Programs**

*Social Security Disability: Disappointing Results From SSA's Efforts to Improve the Disability Claims Process Warrant Immediate Attention.* GAO-02-322. Washington, D.C.: February 27, 2002.

*SSA Disability: SGA Levels Appear to Affect the Work Behavior of Relatively Few Beneficiaries, but More Data Needed.* GAO-02-224. Washington, D.C.: January 16, 2002.

*SSA Disability: Other Programs May Provide Lessons for Improving Return-to-Work Efforts.* GAO-01-153. Washington, D.C.: January 12, 2001.

*Social Security Disability: SSA Has Had Mixed Success in Efforts to Improve Caseload Management.* GAO/T-HEHS-00-22. Washington, D.C.: October 21, 1999.

*SSA Disability Redesign: Actions Needed to Enhance Future Progress.* GAO/HEHS/99-25. Washington, D.C.: March 12, 1999.

*SSA Disability: SSA Return-to-Work Strategies From Other Systems May Improve Federal Programs.* GAO-HEHS-96-133. Washington, D.C.: July 11, 1996.

#### **Supplemental Security Income Program**

*High Risk Series: An Update.* GAO-01-273. Washington, D.C.: January 2001.

*Supplemental Security Income: Additional Actions Needed to Reduce Program Vulnerability to Fraud and Abuse.* GAO/HEHS-99-151. Washington, D.C.: September 15, 1999.

*Supplemental Security Income: Long-Standing Issues Require More Active Management and Program Oversight.* GAO/T-HEHS-99-51. Washington, D.C.: February 3, 1999.

*Supplemental Security Income: Action Needed on Long-Standing Problems Affecting Program Integrity.* GAO/HEHS-98-158. Washington, D.C.: September 14, 1998.

#### **Service Delivery to the Public**

*SSA Customer Service: Broad Service Delivery Plan Needed to Address Future Challenges.* GAO/T-HEHS/AIMD-00-75. Washington, D.C.: February 10, 2000.

#### **Information Technology**

*Information Security: Additional Actions Needed to Fully Implement Reform Legislation.* GAO-02-470T. Washington, D.C.: March 6, 2002.

*Information Technology: Enterprise Architecture Use Across the Federal Government Can Be Improved.* GAO-02-6. Washington, D.C.: February 19, 2002.

*Information Technology Management: Social Security Administration Practices Can Be Improved.* GAO-01-961. Washington, D.C.: August 21, 2001.

*Information Security: Serious and Widespread Weaknesses Persist at Federal Agencies.* GAO/AIMD-00-295. Washington, D.C.: September 6, 2000.

*SSA Customer Service: Broad Service Delivery Plan Needed to Address Future Challenges.* GAO/T-HEHS/AIMD-00-75. Washington, D.C.: February 10, 2000.

*Social Security Administration: Update on Year 2000 and Other Key Information Technology Initiatives.* GAO/T-AIMD-99-259. Washington, D.C.: July 29, 1999.

*Information Security: Serious Weaknesses Place Critical Federal Operations and Assets at Risk.* GAO/AIMD-98-92. Washington, D.C.: September 23, 1998.

#### **SSNs and Personal Information**

*Social Security: Government and Commercial Use of the Social Security Number Is Widespread.* GAO/HEHS-99-28. Washington, D.C.: February 16, 1999.

Chairman SHAW. Do you have testimony, Mr. McClure?

Mr. MCCLURE. No, sir.

Chairman SHAW. Okay, fine. Mr. Huse?

#### **STATEMENT OF THE HON. JAMES G. HUSE, JR., INSPECTOR GENERAL, OFFICE OF THE INSPECTOR GENERAL, SOCIAL SECURITY ADMINISTRATION**

Mr. HUSE. Good morning, Mr. Chairman, Mr. Matsui. It is a pleasure to be here with Ms. Barnhart to discuss some of the chal-

lenges that face her as Commissioner of Social Security. Certainly no Commissioner has ever entered office facing greater challenges.

The first wave of baby-boomers is on the cusp of retirement, increasing the Social Security Administration's workload, even as it decreases SSA's workforce and threatens the solvency of the Trust Fund. Demand for increased service delivery requires speed, while the need for fiscal responsibility and program stewardship requires care, and both demands must be met under a restrictive budget. Add to this the national spotlight brought on by discussions of solvency, personal retirement accounts and what Social Security will look like in the future, and the challenges threaten to become overwhelming.

Then, on September 11, all of these challenges took a back seat to homeland security and the dawning realization that protection of the Social Security number is a key element not only in protect against fraud, but in protecting lives.

Commissioner Barnhart's plate is full, and I pledge my support and the support of the entire Office of the Inspector General in helping her meet these many challenges in a cooperative effort.

When the President's budget was released in February, it included the Office of Management and Budget's evaluation of SSA's progress in meeting the President's Management Agenda. The OMB noted that while SSA received one of the best evaluations in the Federal Government, there remains room for improvement in a number of areas. The challenges identified by OMB closely track the Top Ten Management Issues identified by my office in our most recent Semiannual Report to Congress. I would like to touch briefly on several of these specific challenges.

The first issue to be identified both by my office and by OMB is payment accuracy. Working together with SSA, we have made great strides in reducing all benefit payments to prisoners and Supplemental Security Income payments to fugitive felons over the past several years, and those efforts continue. Erroneous payments, including those to deceased beneficiaries, students, and individuals receiving State Worker's Compensation benefits, continue to drain the Social Security Trust Fund, even as solvency becomes an over-arching issue.

A second closely related area in need of attention is the accuracy of the earnings reporting process. In fiscal year 2001, SSA received about 274-million wage reports from approximately 6.5 million employers. One of the longstanding issues at SSA has been the large number of wage reports that are posted to the "Suspense File" because the records cannot be associated with a valid SSN.

Third, the integrity of the Representative Payee process is a serious issue identified both by my office and by Congress. Representative Payees are appointed by SSA to manage the benefits of children and others incapable of managing their own funds. While most Representative Payees are honest, some are not. In some cases, benefits should not be paid at all; in others, the benefits never reach the actual beneficiary.

Fourth, SSA has long struggled with redesigning the disability process, and I think that has been adequately brought out by the testimony you have heard so far this morning.

Next, Commissioner Barnhart will need to confront issues of system security. Our own audit work, as well as audit work conducted by outside sources, has recognized SSA's efforts to provide for system security, but has also revealed systems security weaknesses that still threaten both the sensitive data SSA stores and the business operations of the Agency.

Finally, the events of the past 8 months make it impossible to overstate the importance of protecting the integrity of the SSN. Because the SSN has become such a vital aspect of American life, the process by which SSA issues SSNs needs immediate attention. I have testified on this point several times in recent months, so I won't go any further into that.

The SSA is justifiably proud of its record of outstanding service to the public, but to the extent that this commitment to service emphasizes speed over accuracy and quantity over quality, we are doing a disservice to the American people. I know that this Commissioner recognizes that true service delivery has two components—speed and accuracy. There is a balance to be struck between the two.

I look forward to meeting the challenges ahead with Commissioner Barnhart, but clearly she has a formidable job leading SSA into the future. All of the recommendations we advance to address SSA's issues require the application, or redirection of precious Agency resources in this time of serious budget strictures. There are no easy answers. I believe that it is in resolving this dilemma, and making these critical choices, that Commissioner Barnhart faces her most difficult challenge.

Thank you, and I would be pleased to answer any of your questions.

[The prepared statement of Mr. Huse follows:]

**Statement of the Hon. James G. Huse, Jr., Inspector General, Office of the Inspector General, Social Security Administration**

Good morning. It is a pleasure to be here today with Ms. Barnhart to discuss some of the challenges that face her as Commissioner of Social Security. Certainly no Commissioner has ever entered office facing greater challenges:

- The first wave of baby boomers is on the cusp of retirement, increasing the Social Security Administration's (SSA) workload even as it decreases SSA's workforce and threatens the solvency of the Trust Fund.
- Demand for increased service delivery requires speed, while the need for fiscal responsibility and program stewardship requires care, and both demands must be met under a restrictive budget.
- Add to this the national spotlight brought on by discussions of solvency, personal retirement accounts, and what Social Security will look like in the future, and the challenges threaten to become overwhelming.

Then, on September 11th, all of these challenges took a back seat to homeland security and the dawning realization that protection of the Social Security number (SSN) is a key element not only in protecting against fraud, but in protecting lives. Commissioner Barnhart's plate is full, and I pledge my support and the support of the entire Office of the Inspector General, in helping her meet these many challenges in a cooperative effort.

When the President's budget was released in February, it included the Office of Management and Budget's (OMB) evaluation of SSA's progress in meeting the President's Management Agenda. OMB noted that while SSA received one of the best evaluations in the Federal Government, there remains room for improvement in a number of areas. The challenges identified by OMB closely track the Top Ten Management Issues identified by my office in our most recent Semiannual Report to Congress. I would like to touch briefly on several of these specific challenges.

The first issue to be identified both by my office and by OMB is payment accuracy. Working together with SSA, we have made great strides in reducing all benefit payments to prisoners and Supplemental Security Income payments to fugitive felons over the past several years, and those efforts continue. But erroneous payments, including those to deceased beneficiaries, students, and individuals receiving state workers' compensation benefits, continue to drain the Social Security Trust Fund even as solvency becomes an overarching issue. Because these overpayments continue to bedevil our benefit disbursement operations, we have made numerous recommendations, many of which SSA has already adopted, and we look forward to working with the new Commissioner to further strengthen our efforts to reduce erroneous payments.

A second, closely related area in need of attention is the accuracy of the earnings reporting process. In FY 2001, SSA received about 274 million wage reports from approximately 6.5 million employers. One of the long-standing issues at SSA has been the large number of wage records that are posted to the "Suspense File" because the records cannot be associated with a valid SSN. This file affects SSA's operations in that wages that cannot be associated with an employee's earnings record can affect the employee's future Social Security benefits, and also affects SSA's operating costs. SSA has made important strides in this area, but again, much remains to be done.

Third, the integrity of the Representative Payee process is a serious issue identified both by my office and by Congress. Representative Payees are appointed by SSA to manage the benefits of children and others incapable of managing their own funds. While most Representative Payees are honest, some are not. In some cases, benefits should not be paid at all; in others, the benefits never reach the actual beneficiary. SSA has made some progress, but both legislative changes and adjustments to SSA's policies and practices must still be made to protect SSA's most helpless beneficiaries and protect against waste of Trust Fund monies.

Fourth, SSA has long struggled with redesigning the disability process. The present system by which disability claims are considered and decided is so overloaded as to be virtually unworkable. On average, it takes SSA 106 days to make an initial determination on a claim. Worse still is the appeals process, which despite numerous failed attempts at improvement, is still so backlogged that a claimant who files a request for a hearing must then wait an average of 308 days for a notice of decision. These never-diminishing backlogs require a visionary approach to break through deeply imbedded bureaucratic processes to bring about true change.

Next, Commissioner Barnhart will need to confront issues of systems security. Our own audit work, as well as audit work conducted by outside sources, has recognized SSA's efforts to provide for systems security, but has also revealed systems security weaknesses that still threaten both the sensitive data SSA stores and the business operations of the Agency. SSA needs to take steps to strengthen its information security framework and improve its overall critical information infrastructure. As we come to rely more and more on technology, and as the demand for service delivery makes online services more and more tempting, it is absolutely critical that SSA's systems be protected from cyber-fraud.

Finally, the events of the past 8 months make it impossible to overstate the importance of protecting the integrity of the SSN. Because the SSN has become such a vital aspect of American life, the process by which SSA issues SSNs needs immediate attention. I have testified on this point several times in recent months, so I will not belabor the issue now, but the growing use of SSN violations to indict and convict individuals known or believed to be associated in some way with terrorism is a testament to the need to act, and act quickly to improve and protect the enumeration process.

The enumeration process, as well as every issue I've mentioned today, presents us with a choice—a choice between increased service delivery, which means speed, and increased accuracy, which means security and stewardship. SSA is justifiably proud of its record of its outstanding service to the public, but to the extent that this commitment to service emphasizes speed over accuracy and quantity over quality, we are doing a disservice to the American people. I know that this Commissioner recognizes that true service delivery has two components—speed and accuracy. There is a balance to be struck between the two, and for all of the reasons I have discussed, we have reached a time where striking that balance properly is more important than ever.

I look forward to meeting the challenges ahead with Commissioner Barnhart, but clearly she has a formidable job leading SSA into the future. All of the recommendations we advance to address SSA's issues require the application, or redirection of precious Agency resources in this time of serious budget strictures. There are no easy answers. I believe it is in resolving this dilemma, and making these critical

choices, that Commissioner Barnhart faces her most difficult challenge. Thank you and I would be pleased to answer any of your questions.

Chairman SHAW. Mr. Daub?

**STATEMENT OF THE HON. HAL DAUB, CHAIRMAN, SOCIAL SECURITY ADVISORY BOARD, AND FORMER MEMBER OF CONGRESS**

Mr. DAUB. Mr. Chairman, Mr. Matsui, good friends, members of this Subcommittee, I appreciate the opportunity to speak to you this morning on behalf of the Social Security Advisory Board. We commend you for taking time to examine the condition of the Social Security Administration and to consider what changes are needed.

My statement reflects the extensive work of the Board over the last 5 years. During that time, we have consulted with hundreds of employees in the Social Security Administration and State disability offices throughout the country. We have collected and analyzed data and held many public hearings.

I am proud to say that I am associated with a group of people that is composed of two former Members of Congress, a former public Trustee, two former Commissioners, and two very distinguished Social Security and benefits scholars. So, we have a group of people that have been assembled that serve, without pay that are really interested in the subject matter that we are here to talk about today and very interested in helping the Subcommittee understand what changes can be made.

As my statement emphasizes, the Social Security Administration's problems are serious, and the need to be addressed I think is clear to everyone. The Agency will have to make major changes in the way it conducts its business, and it will also need additional resources if major service shortfalls are to be averted.

Commissioner Barnhart is a former member of our Board, where she made an outstanding contribution to our work. We know her well, and we know that she has the knowledge, experience, and personal qualities to lead the Agency through a period of rapid change. She will need the support of Congress, the President, and our Board. For our part, we intend to work with her and the Agency on the many changes that are urgently needed.

To summarize, there are three primary areas where the Commissioner needs to focus her attention.

The first is on improving the quality of the Social Security Administration's service to the public, where problems are large and growing. In our reports, we have documented critical service shortfalls in field offices and on the Social Security Administration's 800-number, as well as throughout the disability application and appeals process. Service levels in all of these areas are unacceptably low.

A second, and related, area is improving the Agency's stewardship, ensuring that the public's funds are responsibly collected and expended. The Board issued a report on this subject in March, and each of you have a copy. Particularly after the events of September 11, the Social Security Administration's inability to ensure the integrity of the enumeration process is extremely disturbing. Employees in Social Security field offices are aware that many applicants

for Social Security cards are presenting fraudulent documents. Validating documents with other sources, such as INS, either works poorly or does not work at all. Employees lack the time, training, and the tools they need to determine authenticity for themselves.

The area of greatest difficulty is documents submitted by individuals who are foreign born, but there are problems with fraudulent U.S. documents as well. Far too many replacement cards are being issued, and many of them are unquestionably being used for illegal purposes. I want to underscore the high level of concern that many of the Social Security Administration's frontline workers feel about this problem.

The third major area where improvement is needed is in the Agency's capacity to develop Social Security and SSI policy so that it can provide the comprehensive research and analysis that policy-makers need to address complex issues like Social Security financing and disability. These problems will not be easy to address. They will require new ways of thinking, new practices, and changes in the culture of the Agency.

Facing growing workloads, the Social Security Administration needs a plan that clarifies how it will meet service delivery needs in the future. It needs a budget that provides the resources that will carry out its objectives. We commend the Commissioner for moving forward to develop a more coherent work-based budget that will give the Congress the information it needs to make judgments about the funding levels that are required to serve the public appropriately.

The Agency's current performance measures are seriously flawed. They emphasize process, rather than outcomes, speed, at the expense of quality, and skew performance in inappropriate ways. They are breeding cynicism in the field about the Agency's objectives and motives. The Social Security Administration needs more balanced measures of performance, a management information system that ensures quality performance, and better measures the type and quality of service that the public wants and needs.

As we have emphasized in our reports, disability is at the heart of the Social Security Administration's many challenges. It accounts for two-thirds of the Agency's administrative budget, about \$5 billion this fiscal year. Disability benefits will account for nearly \$100 billion in spending this year or nearly 5 percent of our Federal budget.

The current disability structure is seriously flawed, as we have seen today from a very clear indication of the 1,153 days that it takes, on average, to process claims. This structure, with its flaws, needs to be reformed, and this would be in the interests of both claimants and the taxpayers.

Institutional problems also need to be addressed. Over the years, the Social Security Administration has developed a culture that discourages open discussion of problems. Communication between headquarters and operations in the field, I think, is poor and teamwork among various components, although improving, is demonstrably inadequate. Addressing these issues of Agency culture will require strong leadership.

Finally, maintaining a skilled and experienced staff ranks near the top of the most difficult challenges for the Agency. The Social Security Administration needs to develop ways to attract and retain a skilled workforce, it needs to hire new employees before older ones leave so that there is time to train, mentor, and pass on to a new generation the Agency's very positive traditions. Weakness in human capital can undermine public support for and confidence in the ability of government to perform. Social Security's programs are too important to allow this to happen.

In conclusion, Mr. Chairman, I hope that the Congress will continue to hold regular oversight hearings on issues that we are discussing here today. It is extremely valuable to the Social Security Administration to have thoughtful, balanced, and consistent oversight by the Congress. These hearings force the Agency, and all of us, to focus on the important problems that need attention. The public is well served when the critical issues are forthrightly addressed.

I ask that the document I am holding in my hand, which we wrote and as a Board issued to you in December of this past year, entitled, "Challenges Facing the New Commissioner of Social Security," be included in the record. The document lays out, in much greater detail, the matters that I have summarized for you this morning.

[The information follows:]

#### **CHALLENGES FACING THE NEW COMMISSIONER OF SOCIAL SECURITY**

Over the last 4 years, the Social Security Advisory Board has laid out a set of issues and recommendations that are basic to the health of the Social Security Administration. This paper summarizes the major issues the Board has identified and the recommendations the Board has made to address them. Most of the issues we have raised in our reports have not yet been adequately addressed, and some have not been addressed at all.

The Congress created the Board to provide an independent and objective source of information and advice to the President, the Congress, and the Commissioner. All of our reports have been issued by consensus and without dissent. I would make the point that the kind of in-depth analysis of SSA's problems that we have provided in our reports has never before been available to a new Commissioner. In that regard, I believe the Board has met the expectations of the Congress as to the role of the Board.

The SSA's new Commissioner, Jo Anne Barnhart, is facing many difficult challenges. SSA has reached a critical time in its history. For nearly 20 years the agency has been asked to absorb large cuts in staffing while workloads have grown. Staff in the field have been cut by nearly 30 percent and the number of managers and supervisors in field offices and teleservice centers by nearly one-half.

In response to severe human resource constraints, SSA has struggled to maintain quality of service. Improving systems and changing the way it conducts its business, while helpful, have not been adequate to make up for the loss of personnel. Service is poorer than in earlier years and is no longer measuring up to the agency's own historically high standards.

The employees who work in SSA offices and in the State disability agencies have made extraordinary efforts to meet the agency's challenging workloads. Their rapid and professional response to the events on September 11 demonstrated once again their dedication to public service and their compassion for those who need their help. But every day there are thousands of individuals across the country who come to SSA for help in dealing with their own major life events—retirement, disability, or death. Too often there are too few employees with too little time to respond appropriately to their needs.

The extensive work the Board has done over the last four years has convinced us that SSA's employees are being asked to do too much with too little. As a consequence, the agency's capacity to carry out its mandated responsibilities is increas-

ingly at risk. The situation will worsen rapidly as the population continues to age and baby boomers begin knocking at the door of the Social Security Administration seeking help in filing their claims for disability and retirement benefits.

The time to remedy the shortfalls is now.

### **THREE CRITICAL AREAS WHERE IMPROVEMENT IS NEEDED**

In its reports the Board has described the many aspects of the agency's work where we believe improvement is urgently needed. Three areas merit particular emphasis: service to the public, safeguarding the public's funds, and SSA's capacity to develop sound policy.

#### **Service to the Public**

The problem of the quality of SSA's service to the public is the one that the public is most aware of, and which is most likely to come increasingly to the attention of the Congress.

The most obvious gaps in SSA's service delivery system are in the agency's front-line—the 800 number and the 1300 local offices. For example:

Many callers to SSA's 800 number are not getting the help they need. The agency's longstanding goal of answering 95 percent of calls within 5 minutes is far below private sector standards. Because of lack of resources, even this inadequate 95-percent goal has had to be reduced. The goal now is to answer only 92 percent of calls within 5 minutes. In 2001, of those who finally got through to the 800 number, 20 percent gave up while waiting for an agent to handle the call or before using the agency's lengthy automated message system.

When the Board recently visited the agency's largest teleservice center in Auburn, Washington, employees there expressed serious concern about the quality of service they are able to provide. They told us they are hearing more complaints than ever about the difficulty callers to the 800 number are having in getting through to a real person who can answer their questions. They are frustrated that the pressures to keep calls short limit their ability to provide more help to those who do get through.

Field offices, particularly those in urban areas, often are overcrowded and waiting times are too long. SSA estimates that there are about 85 million telephone calls to field offices each year. But field offices are not adequately staffed to answer this volume of calls in a timely way. When we talked to a group of field office managers in California earlier this year they stated that the situation in their offices was worse than it was in 1999, when the Board issued its first report assessing SSA's service to the public. At a hearing several months ago in Philadelphia, a witness from the Mayor's Commission on Services to the Aging described to the Board the inadequate assistance and tedious waits that visitors to a field office were experiencing, and recommended that SSA staff be given the tools and training they need to deliver good service.

There is broad recognition that those who bear the brunt of field office and telephone service delivery deficiencies usually have the greatest need of assistance. These are primarily individuals who have mental or physical impairments, or who lack the education needed to navigate SSA's complex application and appeals system. A witness at the Board's public hearing in Seattle observed that "SSA has failed to adopt a policy and procedures to effectively serve people with mental, developmental and cognitive disabilities." Other witnesses told the Board that SSA is not equipped to serve the growing numbers of claimants who do not speak English.

Service delivery problems extend beyond the field office and the 800 number. Every component of the disability application and appeals process lacks the highly trained and experienced staff needed to process cases both accurately and timely. In 2000, it took on average 4 months for an SSI claim to go through the initial stage of the process. Those filing for reconsideration of the initial decision waited another 2 months for a decision. An appeal to the administrative law judge level took nearly an additional year. Average processing time at the next level of appeal, the Appeals Council, was well over a year. Claimants who go through SSA's administrative appeals process may thus wait for two, three, or more years before getting a final determination. This is simply not adequate service.

Finally, increasing public understanding of Social Security is another aspect of service to the public where improvement is needed. In earlier years the agency had a large cadre of employees in field offices around the country whose major function was to communicate with workers, employers, and beneficiaries in their communities. Because of downsizing, employees no longer have adequate time to do this kind of work. The agency has taken a number of steps to address this deficit, includ-

ing sending out an annual Social Security Statement to all workers. But surveys show that the public's knowledge of Social Security remains relatively weak, and much more needs to be done.

### **Safeguarding the Public's Funds**

The second critical area where improvement is needed is in the safeguarding, or stewardship, of the public's funds—the work that needs to be done to ensure that taxpayer contributions are appropriately expended. Stewardship is integral to good service to the public. Taxpayers who support SSA's programs want and deserve to know that their tax dollars are being accurately dispensed. Beneficiaries want their payments to be accurate so that they do not have the inconvenience or hardship of dealing with either an overpayment or an underpayment.

The Board's reports have cited a number of areas where more careful stewardship is warranted.

SSI overpayments and underpayments provide one example. In fiscal year 2000, SSA processed 3.3 million SSI overpayments, more than twice as many as in 1990. Despite this large number of clearances, the number of SSI overpayments pending in field offices at the end of fiscal year 2000 was two and a half times what it was at the end of 1990, increasing from 101,000 in 1990 to 260,000 in 2001. SSA's stewardship review shows that the amount of SSI overpayments in 2000 was \$2 billion. Underpayments were estimated to be more than \$440 million.

In our observation, many of the problems that are associated with inaccurate benefit payments stem from the fact that too often employees in the field lack the time they need to process their workloads with proper care. As one agency executive told us: "Employees no longer have the time to cross the t's and dot the i's."

We have heard many examples of this. For instance, overworked employees in field offices have told us that they sometimes do not pursue certain lines of questioning, such as the details of an individual's living arrangements, because it takes too long to resolve the issues that may be raised. Agency employees have also told us that they are not processing reports of earnings or changes in living arrangements as promptly as they should because interviewing claimants who are sitting in overcrowded waiting rooms is—understandably—a higher priority.

Agency employees report that they do not have time to investigate properly the quality and reliability of the representative payees whom they assign to manage payments on behalf of beneficiaries who are physically or mentally impaired. According to SSA data, between 1990 and 2000 the number of work years devoted to representative payee activities decreased by a fifth, while the number of beneficiaries with representative payees increased by a third.

We have heard similar concerns about the impact of inadequate resources from employees in State disability agencies, where examiners are pressed to meet processing times that make it difficult or impossible for them to gather all the evidence that is needed to make accurate and fully substantiated disability determinations. Too often decisions are pushed out the door prematurely in the drive to meet production goals.

One area in which the agency has been greatly assisted by the Congress in carrying out its stewardship responsibilities is in the conduct of continuing disability reviews (CDRs). The special funding that the Congress provided has enabled the agency to expand greatly the number of CDRs that it has conducted. The SSA actuaries estimate that the present value of future benefits saved from CDR activity in fiscal year 2000 alone is \$6 billion, at a cost of only \$609 million, a pay-off ratio of almost 10 to 1. Dedicated funding for CDRs in future years will be critical to the agency's ability to continue this important stewardship work.

CDRs represent one example of how additional administrative dollars can be used to save program dollars. Conducting more frequent and careful SSI redeterminations and making more effective use of data exchanges are others. The competition across the government for discretionary administrative dollars has made it difficult for the agency to build the case for funds for these kinds of stewardship activities, but the case can and should be made.

Like the Congress and SSA's Inspector General, the Board has become increasingly concerned about the growing fraudulent use of the Social Security number. We have been examining the unauthorized use of Social Security numbers, vulnerabilities in SSA's enumeration process, and the role that Social Security numbers play in identity-related crimes. One of our concerns is that the agency's heavy workload, combined with processing time goals, may be discouraging employees in the field from exercising the degree of care in the processing of applications that would otherwise be done.

### **SSA's Capacity to Develop Sound Policy**

The third major area where improvement is needed is in the agency's capacity to develop sound Social Security and SSI policy.

In SSA, the responsibility for developing policy is divided. The Office of Policy is responsible for research and analysis regarding broad policy issues, while the Office of Disability and Income Security Programs is responsible for what the agency calls "program policy," the development of regulations, rulings, and other agency instructions needed to give employees guidance on how to implement statutory requirements.

Currently, there are serious weaknesses in both of these areas. With respect to broad policy issues, SSA needs greatly enhanced capacity to provide the comprehensive research and analysis that policy makers need to address complex issues regarding long-term financing of the Social Security program. Another area that deserves prompt study relates to helping individuals who are disabled find and retain employment.

In the area of program policy, the needs of the disability program are particularly acute. Although the agency has tried in recent years to increase the level of its technical expertise by hiring additional staff, problems persist.

For many years there have been too many sources of disability policy. Adjudicators in State agencies and in SSA's quality assurance system are bound by detailed instructions presented in SSA's Program Operations Manual System (the POMS). The POMS is supplemented by other administrative issuances from SSA. Administrative law judges and the Appeals Council, on the other hand, are bound only by the statute, along with regulations and rulings that have been published in the Federal Register. They also have their own operating instructions in a Hearings, Appeals, and Litigation Law Manual (HALLEX).

In its 1994 plan for redesigning the disability process SSA made development of a single statement of policy a high priority. Because of limited resources, however, this effort has not been pursued with the vigor that was originally intended and that the Board believes is necessary.

The development of sound disability policy requires greater medical and vocational expertise than the agency currently has. Physicians and others in the system have advised us that important medical listings have not been kept sufficiently up to date to reflect advances in medical diagnosis and treatment. Similarly, SSA's vocational guidelines do not take into account the changes that have occurred in the workplace.

Also of great concern is the fact that the Department of Labor's Dictionary of Occupational Titles (DOT) is no longer being updated. This document, which describes the types of jobs that are available in the national economy, has long served as a primary tool for adjudicators in determining whether a claimant has the capacity to work. SSA currently has no replacement for the DOT, leaving a critical policy vacuum at a time when program rules require more and more decisions to be made on the basis of vocational factors.

### **WHAT THE COMMISSIONER WILL HAVE TO DO TO BRING IMPROVEMENT**

SSA's problems will not be easy to address. We have emphasized the need for more adequate resources because the situation is urgent and without them substantial improvement in performance in the short term is unlikely. But additional resources will not be enough and in the longer term the major issues relate to the institutional aspects of the agency. The new Commissioner and her staff will have to make many major changes if the agency is to be able to handle its growing workloads. This will require a combination of approaches, including changes in the agency's strategies and practices, improvements in technology, and changes in organizational arrangements. The culture of the agency also has to be changed. The Board has urged the agency to undertake a number of major initiatives.

#### **Develop a Plan and a Budget That Implements the Plan**

First, to guide the agency's course into the future, SSA should develop a plan that describes how it expects to meet its workload needs, both in the short term and the long term. As indicated above, the plan should address the changes that need to be made in the areas of human resources, technology, work processes, and institutional arrangements.

Among the most urgent issues that need to be resolved are how the agency will meet the needs of the growing numbers of disability claimants, how it will handle

its telephone service, and how it will handle the workload related to the implementation of the new Ticket to Work program.

Looking to the future, we know that the way the agency delivers service will inevitably change. There will be changes in the law and in beneficiary characteristics, and there will be advances in technology. All of these changing factors argue for the establishment of a permanent planning process that will enable the agency to adapt to new circumstances and needs.

Equally important, SSA should have a budget that reflects the agency's objectives and provides the resources that will be needed to meet these objectives. Commissioner Jo Anne Barnhart has made a commitment to develop a budget along the lines that the Board has recommended. This is a challenging undertaking in that it will require the agency to adopt a new way of thinking about how its budget should be constructed. The Commissioner is to be commended for moving forward promptly in this critically important effort.

#### **Strengthen the Policy Infrastructure**

Second, strengthening SSA's capacity to analyze and develop policy should be one of the highest priorities of the Commissioner and the agency. In some respects the agency has made significant strides since the Congress enacted legislation in 1994 making SSA independent of the Department of Health and Human Services. In 1997 SSA created a new Office of Policy with a Deputy Commissioner who reports directly to the Commissioner. New staff have been hired, boosting the agency's ability to conduct policy research and evaluation.

But given the importance of the policy issues facing Social Security, much more needs to be done. There is a large need for deeper analysis of the many issues related to Social Security financing that has yet to be met. The capacity of the Office of Policy to identify issues, develop options, and provide information and analysis to the Congress and the administration on this subject should be dramatically enhanced. Similarly, there is a need for more research and analysis regarding the application of SSA's definition of disability and how it affects work. More comprehensive research on ways to improve incentives for rehabilitation and employment early in a period of disability is also needed.

In the area of disability program policy, SSA needs to strengthen its capacity to issue the thoughtfully crafted regulations and rulings that adjudicators need to guide their decisionmaking. Developing sound disability program policy requires individuals who have extremely high levels of technical and analytical skills. The Board has urged the agency to create a permanent policy unit that combines the knowledge and experience of employees who have worked in all parts of the system, including the Office of Disability, the State disability agencies, and the Office of Hearings and Appeals. If individuals with experience in these offices participate in writing the agency's policy, it is more likely to take into account the important differences in the perspectives and needs of adjudicators in both State agencies and hearing offices.

A single presentation of policy that will be followed by all of the agency's adjudicators is critical to the objective of ensuring consistent and fair decisions for all claimants, and the agency should proceed with this effort as quickly as possible.

The Board has expressed its deep concern about the agency's longstanding inability to explain why disability decisional outcomes show such a high degree of variance over time, between levels of adjudication, and among different regions of the country. The agency should institute a quality management system that will provide the ongoing and comprehensive information that is needed to understand why these large variances exist. Policy makers need far better information than is now available in order to develop and implement the kinds of changes in policies and procedures that are needed to improve accuracy and consistency in decisionmaking. Administrators also need this information in order to detect problems promptly and correct them appropriately.

#### **Improve Service Delivery Practices and Strategies**

Third, it is a truism within the agency that what the leadership chooses to measure is what the agency will do. If the agency establishes a performance measure for a particular work process, such as the number of days it should take to issue a Social Security number, managers and employees in the field will do whatever is necessary to meet the agency's goal.

Many within the agency think that the way SSA currently measures its service performance is seriously flawed. They believe there is too much emphasis on process rather than outcomes, that speed is emphasized at the expense of quality, and performance is skewed in inappropriate ways. The thoughtful comments that we have

heard from employees in the field give credence to these criticisms. The current measures appear to be breeding cynicism about the agency's objectives and motives, an outcome that is clearly counterproductive.

The agency must reassess the way it measures performance, giving close attention to how its measures are affecting the overall quality of service that is being provided to the public. It should seek the advice of the most successful public and private entities and solicit the views of SSA and State agency employees in the field who have a frontline view of the strengths and weaknesses of the current performance measurement system.

The public needs to have a stronger voice in setting the agency's priorities. Last year the agency accepted the Board's proposal for joint sponsorship of a forum on how to measure and use customer service information. This forum brought together experts from the private sector and academia to advise the agency on ways it can improve its measurement and use of customer service information so as to improve the quality of service that it is providing. The agency should build on the beginning steps that it has already taken to build a customer information system that will be instrumental in agency decisionmaking.

One area in which better information is needed regarding the views of the public is the nature and quality of the agency's telephone service. SSA needs a strategy for meeting the growing demand for telephone service. Basic questions need to be answered. For example, are SSA's current 800 number standards adequate to address the public's needs and expectations? Would extending the hours of service provided by the 800 number result in significantly higher public satisfaction with its service? Should SSA's field offices assist in taking 800 number calls?

The volume of telephone calls made to SSA is enormous. In 2001, about 85 million calls were placed to the 800 number and a similar number went to field offices. As noted earlier, getting through to someone who can answer a question is often difficult whichever approach is tried. A witness at a hearing the Board held recently in Seattle described the field offices in that area as "virtually impenetrable" by phone. SSA will have to put into place improved technologies and, most likely, increased staffing as well if it is to meet the growing demand.

The agency's steadily increasing workload will also require the development and implementation of major systems improvements. There is a particularly urgent need for rapid systems improvements throughout the disability determination system. Today, the claims that are filed in the field offices and continue through the State agencies and the hearings and appeals process are all stored on paper and the volume of documents is huge. Although the technology is now available to transform this cumbersome system into a paperless system that will speed up the flow of claims and avoid lost files, the development and implementation of the software and the hardware needed to support the system have been proceeding very slowly. This should be made one of the agency's highest systems priorities.

SSA has been working intensively to transfer as much of its work as possible to the Internet and is anticipating that a significant portion of its future workload can be handled in this way. But SSA's programs are complex and many of the public's interactions with the agency require personal attention. SSA will have to define carefully the functions that are suitable for handling by Internet. It will also have to address issues relating to privacy and program integrity.

Another new and potentially very useful tool is videoconferencing. SSA has begun to use videoconferencing on a pilot basis to conduct administrative law judge hearings and is finding that it can save significant travel time and expense on the part of both judges and claimants. As the technology improves and becomes cheaper and more accessible, videoconferencing has substantial promise for improving service to the public in other ways—for example, by conducting interviews with disability claimants in distant locations and providing translation services in field offices that lack the particular expertise a claimant may need. SSA should continue to evaluate the use of videoconferencing with special emphasis on the added value in serving the public and the quality of outcomes.

### **Consider Ways to Improve Accountability**

Over the last 20 years the number of functional components in the agency has proliferated, leading to a dispersion of responsibility and an erosion of accountability. Many of the components have overlapping lines of authority, requiring a great deal of coordination. Disability is of particular concern. Under the current administrative structure, nearly every component of the agency has a role. Each has its own mission and interests, and no one other than the Commissioner has the authority to bring them together. With so many individuals and offices involved, decisionmaking is slow and creativity is stifled. One of the Commissioner's most difficult challenges will be to establish clearer lines of responsibility and accountability so

that she will receive the high quality of information and analysis that she needs to lead the agency.

Over the longer term, the Commissioner will have to look at the organizational issue in an even more fundamental way. Critical questions need to be confronted regarding SSA's basic service delivery structures. How much and what type of work should be conducted in face-to-face settings? By telephone? By Internet? By outside third parties? In making these choices, what are the tradeoffs in cost, in quality of service to the public, and in program integrity?

#### **Change the Disability Adjudication Process**

Since the Disability Insurance program was enacted in 1956, the Federal-State administrative structure that was established at that time has had to accommodate a dramatic and unforeseen increase in program size and complexity. Today, the disability determination structure is in need of major change.

In the report issued by the Board earlier this year, *Charting the Future of Social Security's Disability Programs: The Need for Fundamental Change*, the Board discussed the problems in the current arrangements and why we think change is needed. We recommended ways to strengthen the Federal-State relationship and reform the hearing process. We urged careful study of how the Appeals Council can be made to function more effectively, and we recommended that the Congress and the Social Security Administration study whether a Social Security Court or a Social Security Appeals Court should replace existing arrangements for judicial review.

Comprehensive hearings by the Congress on the disability programs can be an important first step in the discussion that needs to take place on this subject. The Commissioner and SSA must determine the kinds of changes they believe need to be made, but they will need the help of a broad public discussion that the Congress can lead to assist in their analysis and to build support.

#### **Address Long-Standing Institutional Problems**

In the September 1999 report on improving service to the public, the Board identified three underlying institutional problems that only the leadership of the agency can effectively address:

- An agency culture that discourages open discussion and timely resolution of problems;
- Weaknesses in communication between SSA's headquarters and operations in the field; and
- Inadequate teamwork among various components with parallel responsibilities.

As we noted in our report, SSA's resistance to open discussion has existed for many years, and may have grown out of the agency's historic "can do" approach. But this resistance to openness is particularly inappropriate today, given the scope and magnitude of the agency's problems.

A related problem is a feeling of misunderstanding between SSA's managers in headquarters and employees in the field, including in State disability agencies. Many employees in the field have expressed concern that management in headquarters appears unaware of the problems they are having in serving the public and uninterested in hearing their suggestions for how these problems might be resolved.

Over the years the problems related to agency culture and lack of good communication have been exacerbated by an absence of close teamwork among various parts of the agency whose missions overlap. Disability is the area where the need for better teamwork is most apparent. Administrative arrangements are fragmented, and the working relationships among various parts of the disability system have historically been weak.

These interrelated problems are likely to be highly resistant to change. Since the Board's 1999 service to the public report was issued, the agency's leadership has begun to address them, emphasizing the need for a "one agency" culture. But it will require a convincing and consistent message from the new Commissioner and others who work with her to bring about real and lasting change.

#### **Attract and Retain Highly Qualified Staff to Build for the Future**

Over the present decade, SSA expects to lose more than half of its most valuable asset—its experienced and dedicated staff. By 2010 over 28,000 of the agency's 64,000 employees will retire and another 10,000 will leave for other reasons.

Maintaining a strong staff to carry out the many complex responsibilities of the agency will require careful planning, and ranks near the top of the most difficult challenges the Commissioner must address. Although the events of September 11

and the aftermath reportedly have increased the appeal to young people of working in the Federal Government, it is unlikely that there will be a dramatic difference over the long run in the numbers who will turn to Federal service as their first employment option. SSA needs to do everything it can to attract and retain a skilled workforce. The agency is aware of this need and has been in the forefront of government agencies in planning how this should be done.

But there are forces beyond the agency's control and it will need help. The Administration and the Congress must provide the funds that are necessary to hire new employees before older ones leave so that there is time to train, mentor, and pass on to a new generation the agency's positive traditions. If the agency needs more flexibility than is available under present rules to adjust pay scales to attract and keep the quality of employees that it needs, it should be given it.

Much more attention needs to be given to providing employees in SSA and in the State disability agencies with high quality, ongoing training. The need is particularly urgent for those who are involved in adjudicating disability claims. At the present time training for these employees is highly fragmented and varies greatly from one part of the disability structure to another. SSA should have an ongoing training program where the thousands of individuals in State disability agencies, hearing offices, and quality assurance offices can receive in-depth training on how to apply the agency's disability policy rules. An institutionalized training program, perhaps conducted under the auspices of a prestigious medical institution, would be extremely helpful in addressing the serious problem of inconsistency in decision-making and would help to assure higher quality disability determinations throughout the system.

The reality is that weaknesses in human capital can undermine public support for and confidence in the ability of government to perform. Social Security's programs are too important to allow this to happen.

### **Conclusion**

Some of the most important challenges that Commissioner Barnhart and the agency are facing are highlighted here. Addressing them will require making difficult decisions and setting new directions. The Commissioner is in a unique position to lead the process of change, having been a Member of the Board and having participated in our study of SSA's administrative and policy issues over the last four and a half years. Her colleagues on the Board stand ready to work with her and to assist in any way we can.

One thing is very clear. Disability is at the heart of SSA's many challenges. It accounts for two-thirds of the agency's budget and dominates the work of the agency at all levels. Disability benefits will account for nearly \$100 billion in spending this year, or nearly 5 percent of the Federal budget. Disability will have to be the primary focus of the Commissioner's attention and that of her top management staff for many years to come.

Finally, the Congress should hold regular oversight hearings on the many important issues facing the Commissioner and the Social Security Administration. It is extremely valuable to SSA and other agencies of government to have thoughtful, balanced, and consistent oversight by the Congress. These hearings force the agency and all of us to focus on important issues that need attention. The public is well served when critical issues are forthrightly addressed.

---

Mr. DAUB. I will be happy to answer questions that you have, and I assure you of our continued commitment from the Board to help you in the conduct of your work.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Daub follows:]

### **Statement of the Hon. Hal Daub, Chairman, Social Security Advisory Board, and former Member of Congress**

Mr. Chairman, Mr. Matsui, and Members of the Subcommittee, I appreciate the opportunity to speak to you this morning on behalf of the Social Security Advisory Board. We commend you for taking time to examine the condition of the Social Security Administration and to consider the changes that are needed.

My statement reflects the extensive work that the Board has done over the last five years. During that time we have consulted with hundreds of employees in SSA and State disability offices throughout the country. We have collected and analyzed data, and held public hearings.

As my statement emphasizes, SSA's problems are serious and need to be addressed as promptly as possible. The agency will have to make major changes in the way it conducts its business and it will also need additional resources if major service shortfalls are to be averted.

Commissioner Barnhart is a former member of the Board, where she made an outstanding contribution to our work. We know her well, and we know that she has the knowledge, experience, and personal qualities to lead the agency through a period of rapid change. She will need the support of the Congress, the President, and the Board. For our part, we intend to work with her and the agency on the changes that are urgently needed.

To summarize there are three primary areas where the Commissioner needs to focus her attention.

The first is on improving the quality of SSA's service to the public, where problems are large and growing. In our reports we have documented critical service shortfalls in field offices and on SSA's 800 number, as well as throughout the disability application and appeals process. Service levels in all of these areas are unacceptably low.

A second and related area is improving the agency's stewardship—ensuring that the public's funds are responsibly collected and expended. The Board issued a report on this subject in March. Each of you was sent a copy.

Particularly after the events of September 11, SSA's inability to ensure the integrity of the enumeration process is extremely disturbing. Employees in the field are aware that many applicants for Social Security cards are presenting fraudulent documents. Processes for validating documents with other sources, such as the INS, either work poorly or do not exist at all. Employees lack the time, training, and tools they need to determine authenticity for themselves. The area of greatest difficulty is documents submitted by individuals who are foreign born, but there are problems with fraudulent U.S. documents as well. Far too many replacement cards are being issued and many of them are unquestionably being used for illegal purposes. I want to underscore the high level of concern that many of SSA's frontline workers feel about this problem.

The third major area where improvement is needed is in the agency's capacity to develop Social Security and SSI policy so that it can provide the comprehensive research and analysis that policy makers need to address complex issues like Social Security financing and disability.

These problems will not be easy to address. They will require new ways of thinking, new practices, and changing the culture of the agency.

Facing growing workloads, SSA needs a plan that clarifies how it will meet service delivery needs in the future. It needs a budget that provides the resources that will carry out its objectives. We commend the Commissioner for moving forward to develop a more coherent, work-based budget that will give the Congress the information it needs to make judgments about the funding levels that are required to serve the public appropriately.

The agency's current performance measures are seriously flawed. They emphasize process rather than outcomes, speed at the expense of quality, and skew performance in inappropriate ways. They are breeding cynicism in the field about the agency's objectives and motives. SSA needs more balanced measures of performance, a management information system that ensures quality performance, and better measures of the type and quality of service that the public wants and needs.

As we have emphasized in our reports, disability is at the heart of SSA's many challenges. It accounts for two-thirds of the agency's administrative budget—about \$5 billion this fiscal year. Disability benefits will account for nearly \$100 billion in spending this year, or nearly five percent of the Federal budget. The current disability structure is seriously flawed and needs to be reformed in the interests of both claimants and taxpayers.

Institutional problems also need to be addressed. Over the years, SSA has developed a culture that discourages open discussion of problems. Communication between headquarters and operations in the field is poor, and teamwork among various components, although improving, is demonstrably inadequate. Addressing these issues of agency culture will require strong leadership.

Finally, maintaining a skilled and experienced staff ranks near the top of the most difficult challenges for the agency. SSA needs to do everything it can to attract and retain a skilled workforce. It needs to hire new employees before older ones leave so that there is time to train, mentor, and pass on to a new generation the agency's positive traditions. Weaknesses in human capital can undermine public support for—and confidence in—the ability of government to perform. Social Security's programs are too important to allow this to happen.

In conclusion, Mr. Chairman, I hope that the Congress will continue to hold regular oversight hearings on the issues we are discussing here today. It is extremely valuable to SSA to have thoughtful, balanced, and consistent oversight by the Congress. These hearings force the agency and all of us to focus on the important problems that need attention. The public is well served when critical issues are forthrightly addressed.

I ask that a document entitled "Challenges Facing the New Commissioner of Social Security", December 2001 be issued in the record. This document lays out in much greater detail matters that I have summarized.

I will be happy to answer any questions that you may have, and I assure you of the continued commitment of the Board to be of help to you as you conduct your work.

---

Chairman SHAW. Thank you. Ms. Smith?

**STATEMENT OF MARIE SMITH, PRESIDENT-ELECT, AARP**

Ms. SMITH. Thank you, Mr. Chairman, Mr. Matsui.

My name is Marie Smith, and I am the new President-Elect of AARP. We appreciate the opportunity to present our views on the challenges facing the new Commissioner of Social Security. I was particularly interested to hear the new Commissioner's remarks and happy that she has been able to drill through to some of the major problems because I am a former Social Security Manager and spent 25 years with that Agency, and I know the value of the Agency.

It administers both the Social Security program and Supplementary Security Income, SSI Programs, which are crucial to the economic well-being of millions of Americans of all ages. It is important that the Agency maintains complete and adequate records, responds quickly and courteously to information requests, and safeguards the program's financial integrity. If SSA falls short, then public confidence in the Agency, and in the Social Security program itself, will be undermined.

The AARP members still report problems reaching the 800-number, particularly during peak hours. They feel frustrated at not being able to speak with knowledgeable and sympathetic staff. Since the 800-number is the primary point of access, the Agency needs to do a better job training staff and providing them with accurate and complete information. Access to local offices must remain an option for those who prefer to do business in person or are uncomfortable using the telephone.

Service delivery problems are particularly evident in the disability program, which we have been discussing today. The backlog of applications and appeals places many applicants in economic jeopardy because they have few resources to sustain themselves until benefits begin. The Agency has a fiduciary responsibility to safeguard the trust funds, yet it should provide benefits in a timely manner to those who are eligible.

The SSA must address its current service delivery problems and anticipate future service delivery needs brought on by the retirement of the boomers. The SSA must be prepared to deliver service in a way that satisfies all groups of boomers. Despite the increased familiarity with technology that will differentiate many boomers from past beneficiaries, some segments of the boomer population will require personalized service. The Agency will face the chal-

lenge of the boomer retirement at a time when many of its own senior-level managers will be retiring as well, as we have heard.

The SSA devotes considerable resources to the SSI Program, but has been criticized for providing benefits to some who are not eligible and for erecting barriers for those who could qualify. The SSA's overall service delivery problems are exacerbated by inadequate funding. While the Agency's administrative expenses are paid with Social Security Trust Funds, Congress continues to include these costs within the annual discretionary spending limits it sets for non-Social Security programs.

The AARP will continue its strong support for removing SSA's administrative costs from these spending limits. This change can help ensure that the Agency will have the resources to provide the American people with the quality service they deserve.

The SSA touches Americans from the time of birth, and the issuance of a Social Security number, through entrance and departure from the workforce and into retirement. Many people will have limited contact, while others will interact with the Agency often. Even if only a small percentage of people experience problems with SSA, it will represent a sizable number of people.

Regardless of the amount of contact, the Agency should strive to provide the highest quality of service and ensure that no matter who you are, you will be treated courteously, receive accurate and timely information, and have your problem resolved expeditiously. Thank you.

[The prepared statement of Ms. Smith follows:]

**Statement of Marie Smith, President-Elect, AARP**

AARP appreciates the opportunity to present its views regarding the challenges facing the new Commissioner of Social Security. The Social Security Administration (SSA) has provided quality service throughout most of its history, but as it enters into the 21st century it will face new problems that need to be addressed in a timely manner. At her confirmation hearing before the Senate Finance Committee, Commissioner Barnhart identified some of the key issues awaiting her: ensuring the program's long-term solvency for future generations; providing quality service to the public at the same time as the number of beneficiaries rises because of the aging of the Boomers; and improving program integrity through solid fiscal stewardship. These areas were identified at the 1998 confirmation hearing for the prior Commissioner. The agency has made some improvements, but more can and needs to be done. SSA would be better able to improve service if its administrative costs, funded with trust fund dollars, were removed from congressionally-mandated spending caps that apply mostly to programs funded from the non-Social Security budget.

SSA administers the Old Age, Survivor and Disability Insurance and the Supplemental Security Income (SSI) programs, which provide monthly income support to more than 45 million Americans of all ages. The agency also maintains wage records for over 150 million workers and provides annual statements of worker earnings and estimated benefits, as well as issuing new Social Security cards. It is important that the agency respond quickly and courteously to information requests, communicate clearly to the public it serves, maintain complete and adequate records, and safeguard the programs from fraud and abuse. If SSA falls short, public confidence in Social Security could be undermined.

**I. SERVICE DELIVERY**

**A. Staffing**

SSA has always prided itself on its service to the public. For much of the agency's history, those who sought assistance and information found employees who took the time and had the interest and expertise to help them. Today, SSA employees remain dedicated, but in some offices staff shortages or inadequate resources may hinder the performance of even the most well-intentioned individual and could have a significant impact on long-term delivery.

SSA underwent an over twenty-percent staff reduction from 1985 to 1990, which was largely accomplished through attrition. While SSA was undergoing this downsizing, federal legislation added to SSA's responsibilities by requiring the widespread distribution of Social Security benefit and earning statements and changing the status of some individuals receiving Social Security and SSI benefits. This further strained the agency's already limited resources and hampered its ability to maintain consistent and quality service.

By 2015 the first wave of Boomers will be in their 60s, and SSA's retirement and survivor beneficiary population will reach about 50 million. As the agency prepares for the influx of retiring Boomers, it will have proportionately fewer resources but greater responsibilities. The situation could worsen because many senior-level managers will be retiring. The Boomers' familiarity with technology and the internet and their service delivery expectations differ from current beneficiaries. Despite the increased familiarity with technology that will differentiate these beneficiaries from previous ones, some Boomers will continue to require more personalized service. SSA must be prepared to deliver service in a way that satisfies the various clients it serves.

#### B. The 800 Number and Accurate Information

Claimants continue to experience difficulty accessing SSA by phone and obtaining accurate information from the agency. SSA set up the 800 number to improve service. While a toll-free number is convenient for simple matters, it does not necessarily work for complex ones. And, if the caller is unable to speak to an SSA employee and gets repeated busy signals, even the simplest matter is not being handled.

Although the public reports overall satisfaction with SSA's customer service, we continue to hear about 800 number access and service problems. SSA sometimes reassigns staff to handle calls during peak hours, but that means other duties are being neglected. AARP believes the 800 number should be used for basic transactions, and 800 number staff should receive sufficient training and/or information to answer basic questions on the phone.

Even an easily accessible 800 number poses hardships for SSA's most vulnerable claimants—many of whom lack the physical ability, language skills, or mental acuity to use the telephone for certain types of information. Those who are unaccustomed to doing business by phone may find it upsetting to use the telephone to complete a transaction that will have a significant impact on their lives. Local office visits must continue to accommodate individual needs and preferences as well as to deal with complicated matters.

#### C. The Disability Program

SSA has been unable to keep up with the dramatic increase in its disability caseload. In particular, the agency has a significant backlog of initial applications and those appealing a denial must wait a long period of time before their case is heard. The agency has taken steps to speed up initial disability application processing time and reduce backlogged appeals. If the complaints we receive are an indicator, the problem persists. SSA should resolve these problems since those with disabilities are less likely to be able to work or have the resources to sustain themselves until they begin receiving the benefits to which they are entitled.

It is critical that those who are eligible for benefits receive them in a timely and efficient manner. At the same time, the agency is the guardian of the trust funds and must consistently and accurately evaluate initial and ongoing eligibility for those who have a disability. In particular, SSA has not conducted the required continuing disability reviews for disabled beneficiaries because of competing demands and limited resources. Consequently, some beneficiaries continue to receive Social Security disability benefits although they no longer are qualified. Not only do the trust funds lose money, but also individuals who have been overpaid may have considerable difficulty repaying the program.

## **II. SUPPLEMENTAL SECURITY INCOME**

The SSI program, that serves 5 million people of all ages, is the largest cash assistance program for low-income individuals. Since recipients must prove their income and assets fall below certain thresholds, SSA must devote considerable resources and staff time to verifying eligibility on an initial and ongoing basis. SSA's administration of the program has been criticized in two areas: providing SSI to some who are not eligible and failing to provide benefits to those who legitimately qualify but do not know about the program and/or how to properly file an application to get benefits.

SSA must continue its efforts to recoup SSI overpayments and reduce fraud and abuse. The SSI program has been put on the General Accounting Office's (GAO) list of high-risk programs. The GAO faulted SSA for failing to adequately verify recipients' initial and continuing eligibility, to effectively recover SSI overpayments, to aggressively combat fraud and abuse, and to proactively develop SSI policies or an overall program management plan.

While the SSI program must be carefully monitored to prevent ineligible individuals from defrauding the government, the agency should not erect barriers for those who could qualify for benefits. Receipt of SSI is critical to the economic well being of very vulnerable individuals and is a gateway to other public benefits. AARP has undertaken many projects to educate potentially eligible individuals about the availability of SSI and assist them in applying for benefits. These are highly intensive, one-to-one activities undertaken by dedicated volunteers. Some AARP projects were in collaboration with SSA and many others required interaction with agency personnel. While these programs help many individuals to learn about and potentially qualify for SSI, they are not a substitute for an effective SSA-sponsored outreach program.

A sizeable number of individuals do not qualify for SSI on initial application. Our volunteers report that agency explanations of a denial are confusing and did not clearly describe the appeals process. Fortunately, our volunteers are familiar with these procedures and could assist in the appeal. Thus, many more people ultimately received benefits because they had assistance. AARP believes that SSA should do a better job of recognizing the differing backgrounds and cultures that it serves and make additional efforts to meet their needs.

### **III. SSA's ADMINISTRATIVE EXPENSES**

SSA's administrative expenses are paid with trust fund dollars but are included in congressionally determined, annual, discretionary spending caps. As a result, the agency does not always receive sufficient funding to address its service delivery needs. AARP supports removing the administrative expenses from the congressional spending caps as a way of ensuring that current and future service needs are fully funded. In any event, any savings from constraining SSA's expenses accrue to the trust funds and are not directly available to finance the operations of other agencies

### **IV. HELPING SECURE LONG-TERM SOLVENCY**

Although the Social Security Administration itself will not determine how to restore long-term solvency to the Social Security program, the agency will play a significant role in the process. Social Security Administration actuaries and research staff provide the technical expertise to evaluate solvency proposals and their impact on workers, beneficiaries and the economy. This is a less visible role than the one the agency plays in educating the public about the program and its financing.

Polls show the American public is not aware of the many options that could help restore long-term solvency, and does not understand the trade-offs among them. Over the last few years, the Social Security Administration has undertaken an extensive public education campaign about the options. We hope the agency will continue to engage Americans of all ages in the national dialogue about the value and future of Social Security as well as the importance of having other savings for retirement. This information can help forge the consensus that can lead to a bipartisan solution to strengthen Social Security and enhance overall retirement security.

### **VI. CONCLUSION**

The Social Security Administration touches the lives of all Americans from the issuance of a Social Security number at birth through entrance and departure from the workforce. Many people will have limited contact with the agency, while others will have greater interaction. Regardless of the level of contact by each person, the agency should strive to provide the highest quality of service and ensure that no matter who you are, you will be treated courteously, receive accurate and timely information, and have your problem resolved expeditiously.

---

Chairman SHAW. Thank you, Ms. Smith. Ms. Ford?

**STATEMENT OF MARTY FORD, CO-CHAIR, SOCIAL SECURITY TASK FORCE AND WORK INCENTIVES IMPLEMENTATION TASK FORCE, CONSORTIUM FOR CITIZENS WITH DISABILITIES**

Ms. FORD. Chairman Shaw, Representative Matsui, and Members of the Subcommittee, thank you for this opportunity to testify on the challenges facing Commissioner Barnhart.

From the perspective of people with disabilities and as we have heard a lot this morning, there are obviously numerous challenges, and we look forward to working with the Commissioner and with this Subcommittee in meeting them.

In our experience with SSA, we have learned that there is great value in working together to address concerns before they reach crisis proportions. We hope to continue this approach under Commissioner Barnhart's leadership. We may not always agree, but we can certainly avoid unintended consequences with open dialogue early on.

I will discuss several of the challenges identified in our more complete written testimony.

Social Security Trust Fund solvency is an overarching issue. The disability community has raised numerous concerns about the potential impact of Social Security reform proposals on people with disabilities who receive benefits throughout the Old-Age Survivors and Disability Insurance programs. The SSA will need to play a major role in the evaluation of reform proposals for their impact on people with disabilities. We have urged that Congress request a beneficiary impact statement from SSA on every major proposal under serious consideration.

There are several work-related issues that require attention. The chronic problem of overpayments to beneficiaries in both the Title II and Title XVI disability programs is a major barrier to beneficiaries' ability to use the work incentives. If not addressed, beneficiaries will continue to be fearful of attempting to work. To address this, SSA must establish a reliable, efficient, beneficiary-friendly method of collecting and recording, in a timely manner, information regarding a worker's earnings when they are reported. In addition, SSA must adjust benefits in a timely manner. We have also recommended that Congress require SSA to forgive overpayments if the beneficiary is not notified within a reasonable period of time.

We most definitely appreciate the inclusion in H.R. 4070 of the requirement that SSA provide a receipt to the beneficiary whenever a change in earnings or work status is reported. This could go a long way in helping to resolve some of the problems with earnings reports.

Consumers have also raised numerous issues about the final regulations regarding the Ticket to Work program. The SSA has stated in those final regulations that it will monitor and evaluate many of the potential pitfalls that had been identified by advocates. We urge Commissioner Barnhart to ensure that the Agency lives up to these promises and takes action where policies are creating barriers to increased independence and self-sufficiency. We pledge to work with the Commissioner in identifying those areas that con-

tinue to prove problematic and in recommending changes. In fact, some of those discussions have already begun.

In the meantime, there are several important related issues that also need attention. They include the adequacy of incentives study and the earnings offset demonstration built into the Ticket to Work law. These are critical parts of the law and should be implemented as soon as possible.

Also, several issues have surfaced regarding the treatment of disabled adult children under the Ticket legislation, and we urge the Commissioner to work with us in identifying and clarifying those issues and to resolve them through regulations.

Now, I want to turn to some process issues. As we have heard over and over today, the backlog of cases waiting for ALJ and Appeals Council decisions is unacceptably long. We support efforts to reduce unnecessary delays and make the process more efficient, so long as they do not affect the fairness of the process. Numerous proposals have come forward that, in fact, do not reflect consumer concerns. We believe that the right to a full and fair hearing before an Administrative Law Judge should be preserved. The record must be kept open for new evidence. The Appeals Council should continue to review cases, and judicial review of cases should remain in the Federal court system. We urge Commissioner Barnhart to take these consumer concerns into account in efforts to reduce the backlog.

We support the provisions in H.R. 4070 to strengthen SSA's ability to address abuses by representative payees, and we urge SSA to pay particular attention to government agencies who serve as representative payees and to ensure that government agencies are not chosen over family or friends who are available, willing, and capable to serve as payees.

We also appreciate and support your inclusion in H.R. 4070 of the program to establish a voluntary attorneys' fee payment system in SSI.

We also have serious concerns about SSA's workload. That has been mentioned several times. We strongly support removing SSA's limitation on administrative expenses from any domestic discretionary spending caps.

I thank you for this opportunity to testify and look forward to working with the Subcommittee and the Commissioner on these issues.

[The prepared statement of Ms. Ford follows:]

**Statement of Marty Ford, Co-Chair, Social Security Task Force and Work Incentives Implementation Task Force, Consortium for Citizens with Disabilities**

Chairman Shaw, Representative Matsui, and Members of the Subcommittee, thank you for this opportunity to testify regarding the challenges facing the new Commissioner of the Social Security Administration.

I am Director of Legal Advocacy for The Arc of the United States. I am testifying here today in my role as co-chair of the Social Security Task Force and the Work Incentives Implementation Task Force of the Consortium for Citizens with Disabilities. CCD is a working coalition of national consumer, advocacy, provider, and professional organizations working together with and on behalf of the 54 million children and adults with disabilities and their families living in the United States. The CCD Social Security and Work Incentives Implementation Task Forces focus on disability policy issues in the Title XVI Supplemental Security Income program and the Title II disability programs.

CCD welcomes the opportunity to testify here today and appreciates your holding a hearing at the beginning of Jo Anne Barnhart's service as Commissioner. From the perspective of people with disabilities, there are numerous issues that we believe pose challenges for Commissioner Barnhart and her staff. We look forward to working with the Commissioner and the Subcommittee in meeting these challenges.

In our experience with the Social Security Administration, we have learned that there is great value in working together to address problems and concerns before they reach crisis proportions. We want to continue this approach with SSA under Commissioner Barnhart's leadership. We expect that there will be times when we are in disagreement over an issue; however, working with input from consumer advocates, SSA would be in a better position to devise solutions which work to the greatest extent possible to meet the needs of people with disabilities.

### **Social Security Trust Fund Solvency**

The disability community has raised numerous concerns about the potential impact of Social Security reform proposals on people with disabilities. In January 2001, the General Accounting Office issued a report which reinforces our concerns about the negative impacts many of the reform proposals would have on people with disabilities, *Social Security Reform: Potential Effects on SSA's Disability Programs and Beneficiaries*, GAO-01-35 (Jan. 2001).

In December 2001, the President's Commission to Strengthen Social Security published its final report. The Commission chose not to hear formal testimony from people with disabilities. However, the CCD Task Forces met with about half of the members of the Commission to discuss the interests of people with disabilities. We are disappointed that the report failed to deal with many of the important issues that we raised. Furthermore, the Commission acknowledged that applying their recommended retirement program changes to the Social Security Disability Insurance program could result in reduced benefits for people with disabilities. The Commission recommended that the President and Congress further study how to address the DI program issues. At the same time, the report failed to address the issues for dependents and survivors with disabilities whose benefits come from the retirement and survivors programs, rather than the DI program, and whose benefits too would suffer cuts under the Commission's proposals. In fact, in all of the proposals, the benefit reductions would impact people with disabilities regardless of which Trust Fund pays the benefits.

The Commission's decision to leave people with disabilities out of the public hearings was based on the members' belief that the Commission's charge did not include the disability programs. At the meeting with the Commissioners, we emphasized that people with disabilities benefit from all parts of Title II, not just the Disability Insurance program. Categories and sources of benefits include:

- disabled workers, and their families, receive benefits based on the workers' work histories, from the DI program;
- retirees with disabilities receive benefits based on their own work histories from the retirement program;
- disabled adult children who are dependents of disabled workers and retirees receive benefits from the DI and retirement programs, respectively;
- disabled adult children who are survivors of deceased workers/retirees receive benefits from the survivors program; and
- disabled widow(er)s receive benefits from the survivors program.

Beneficiaries with disabilities depend on Social Security for a significant proportion of their income. The more limited capacity of beneficiaries with disabilities to work and to save for the future and the reality of their higher rates of poverty must be taken into consideration in any efforts to change the Title II programs.

The nature of the OASDI programs as insurance against poverty is essential to the protection of people with disabilities. The programs are unique in providing benefits to multiple beneficiaries and across multiple generations under coverage earned by a single wage earner's contributions. Proposals that partially or fully eliminate the current sharing of risk and replace it with the risks of private investment will be harmful to people with disabilities who must rely on the OASDI programs for life's essentials. Diversion of Social Security revenues to private investment accounts would shift the risks from the Federal Government back to the individual. This could have a devastating impact on people with disabilities and their families as they try to plan for the future. The basic safety nets of retirement, survivors, and disability insurance would be substantially limited and individuals, including those with limited decision-making capacity, would be at the mercy of fluctuations in the financial markets.

For these and other reasons, the CCD Task Forces have urged that Congress request a beneficiary impact statement from SSA on every major proposal, or component of a proposal, under serious consideration. SSA will need to play a major role in the evaluation of reform proposals for their impact on people with disabilities.

### **Earnings Reports**

The chronic problem of overpayments to beneficiaries in both Title II and Title XVI is a major barrier to beneficiaries' ability to take advantage of the work incentives programs, including the new incentives of the Ticket to Work and Work Incentives Improvement Act (TWWIIA). If not addressed, beneficiaries will continue to be fearful of working.

As the system now operates, chronic overpayments to beneficiaries result from significant delays in, and sometimes complete failure of, SSA personnel recording earnings reports for working beneficiaries. We believe that part of the problem may be that SSA workers do not get any credit for this work in their work evaluations. In addition, there is not a well-defined process for beneficiaries to use in reporting earnings. Beneficiaries often tell us that they are very conscientious in reporting their earnings, but the overpayments still occur over significant periods of time. When that happens, beneficiaries are not equipped to know whether the benefit amount they are receiving is correct or whether SSA has made an error or failed to record earnings. Over time, overpayments build and it is not unusual for beneficiaries to be told to pay back tens of thousands of dollars. Beneficiaries are so fearful of overpayments and the inadequate notices from SSA that go with them that the Ticket program and other work incentives could fail.

We urge SSA to establish a reliable, efficient, beneficiary-friendly method of collecting and recording, in a timely manner, information regarding a worker's earnings. In addition, SSA must adjust benefits in a timely manner. CCD has further recommended that Congress require SSA to forgive overpayments if the beneficiary is not notified within a reasonable period of time. We appreciate the inclusion in the Social Security Program Protection Act of 2002, H.R. 4070, of a requirement that SSA provide a receipt to the beneficiary whenever a change in earnings or work status is reported. This could go a long way in helping to resolve some of the problems with earnings reports.

### **Work Incentives**

#### **1. Ticket to Work Program**

As you know, the CCD Task Forces supported the Ticket to Work and Work Incentives Improvement Act on behalf of people with disabilities who wanted to work but were prevented from doing so by the barriers that existed in the Title II and SSI programs and Medicare and Medicaid. We believe that the purpose of the bill was to ensure that people with severe disabilities would not permanently lose needed supports if they attempted to work and to expand their opportunities to make those attempts.

However, after the proposed regulations were published last year, we testified that certain significant changes must be made to the proposed regulations if the purposes of the program are to be fulfilled. We urged that speedy implementation not come at the expense of ensuring that the program works for the intended purpose. While we were pleased to see that President Bush included the implementation of the new work incentives in his New Freedom Initiative early last year, we were still concerned that speedy implementation of problematic regulations could create new barriers rather than eliminate barriers to work. Our concerns included, among others, the limitation on one ticket per period of disability; the measures for timely progress on a work plan; and the structure of the outcome and milestone payment systems.

SSA must seriously consider the issues raised by advocates if the program is expected to accomplish its purpose. Although SSA responded somewhat to a few of the concerns expressed over the proposed rules, the agency left in place many policies that advocates felt could be problematic for successful implementation of the Ticket to Work Program. SSA has chosen to maintain eligibility criteria for the ticket that will deny entrance to the program to many beneficiaries who are legitimately entitled to its opportunities. In addition, it appears that an attempt to work must ultimately be successful or the individual will not be able to receive another ticket to try again at some point in the future. While we are pleased that SSA increased the number and the amount of milestone payments, the current payment systems—in particular, the milestone payment system—are still considered inadequate and threaten the success of the Ticket to Work program. Adequate payment systems will help ensure the program works as this Committee intended.

Leaving in place a dispute resolution process that favors employment networks over beneficiaries, SSA insists that beneficiaries will still have access to protection and advocacy services—even as the agency has severely restricted the services that the Protection and Advocacy Systems (P&As) are allowed to offer. SSA appears not to understand the structure, authority, and role that Protection and Advocacy systems should play in providing independent legal advocacy services within the new Protection and Advocacy for Beneficiaries of Social Security (PABSS). SSA has restricted the scope of both the types of cases and the remedies available to resolve issues and has prohibited P&As from working on appeals involving overpayments, continuing disability reviews, plans for achieving self-support, subsidies, and impairment related work expenses. While the P&As are allowed to offer assistance or advice in filling out necessary paperwork, for example, to request a reconsideration or a waiver of an overpayment, they are not allowed to provide representation in those matters. This raises a number of issues, one of which is an ethical dilemma for the attorneys. They are permitted to provide some advice and counseling regarding certain problems, but at some point must refuse to provide representation to the client as the issue progresses. We want to thank the Subcommittee for addressing some of these concerns through language included in H.R. 4070.

We want to thank Commissioner Barnhart for resolving the recent dispute regarding funding of the P&A systems by restoring the funding allocation to the full amount. This is critical in ensuring that individuals will be able to navigate their way through the system.

In the final rule, SSA asserts that it will “monitor” and “evaluate” many of the potential pitfalls identified by advocates. We urge Commissioner Barnhart to ensure that the agency lives up to these promises and takes action where it is determined that the policies are denying beneficiaries the possibility of increased independence and self-sufficiency. We pledge to work with the Commissioner in identifying those areas that continue to prove problematic and in recommending changes to make the system work for individuals who want to become more independent.

## **2. Studies**

We believe that SSA must design an Adequacy of Incentives study (as required by TWWIA) that includes the best information in the field about employment for people with significant disabilities. The AOI report is critical for: people with a need for ongoing supports and services; people with a need for high-cost accommodation; people who earn a sub-minimum wage; and people who work and receive partial cash benefits. Advocates urge SSA to ensure that this is a strong and effective study that will lead to alternative payments for people with significant disabilities. SSA must move quickly on this so that any deficiencies in incentives may be addressed by the time the Ticket program is fully implemented.

In addition, we believe that the earnings offset (\$1 benefit offset for \$2 earned) demonstration is a critical part of the law, particularly for those whose earnings will remain low, and that it should be implemented as soon as possible. Again, the demonstration must be designed to reflect realities for people with severe disabilities in their attempts to work and to maintain an income over the course of their lives. We have had numerous discussions with SSA staff regarding these issues. In addition, the Work Incentives Advisory Panel convened an expert panel to address some of the issues involved. Based on the discussions at that meeting, many advocates are very concerned about the possibility of a mandatory assignment of beneficiaries to a demonstration program that may deprive them of benefits to which they are entitled (for instance, a mandatory demonstration where the earnings offset begins below the SGA level). Furthermore, there are concerns about the possibility of beneficiaries in the demonstration being rejected by employment networks because of the longer time that it will take for ENs to be reimbursed. We urge SSA to consider these concerns in refining its plans for the demonstration and to move quickly towards its implementation.

## **3. Disabled Adult Child Issues**

There are several issues which have surfaced regarding the treatment of disabled adult children under the Ticket to Work and Work Incentives Improvement Act. It is important that these issues get resolved if the work incentives are to operate as intended by TWWIA. First, we are concerned that people with disabilities who are disabled adult children (DAC) in the Title II program should be able to move on and off the program to the same extent that other people with disabilities are able to under TWWIA. Since the rules regarding DAC eligibility have some unique requirements, it is important that the regulations clearly outline the impact of work on disabled adult children who use a ticket.

There is also a concern about how work supports are treated for a disabled adult child, depending on whether the beneficiary receives such supports from his/her employer or whether the supports are provided by a third party, such as a supported employment provider. SSA has made some efforts to address this issue through the Program Operations Manual System (POMS), however, it appears that the issue has not been fully resolved. If disabled adult children are to be encouraged to use the new work incentive provisions, there must be a cohesive, understandable policy, embodied in regulations, upon which disabled adult children and their advisors may rely in making employment decisions. We urge the Commissioner to work with us in identifying and clarifying these issues and to resolve them through regulations.

#### **Disability Backlog/Hearings and Appeals**

The backlog of cases waiting for ALJ and Appeals Council decisions is unacceptably long. People with severe disabilities who by definition have limited earnings from work are often forced to wait years for a final decision from the time of application through the final Appeals Council decision. This is damaging not only to the individual with a disability and his/her family, but also to the public perception of and integrity of the program.

Bringing the waiting times down in these two areas must be a high priority. We urge commitment of resources and personnel to resolve the exorbitant waiting times and make the process work better for people with disabilities. First, SSA must be provided with the resources to fully meet its administrative responsibilities. As noted later in this testimony, this requires that SSA's Limitation on Administrative Expenses budget authority be removed from the domestic discretionary spending category.

We strongly support efforts to reduce unnecessary delays for claimants and to make the process more efficient, so long as they do not affect the fairness of the process to determine a claimant's entitlement to benefits.

**1. The right to a full and fair hearing before an Administrative Law Judge.** The key aspect of the adjudication process for a claimant is the right to a full and fair hearing by an Administrative Law Judge (ALJ), who is an independent decision-maker, providing impartial fact-finding and adjudication. The ALJ asks questions of and takes testimony from the claimant, may develop evidence when necessary, and applies the law and agency policy to the facts of the case. Claimants have the right to present new evidence in person to the ALJ and to receive a decision from the ALJ that is based on all available evidence. This should be preserved.

**2. Keeping the record open for new evidence.** Many recent proposals to change the disability determination process recommend that the record be closed to new evidence either after the DDS decision or, at least, after the ALJ level. In the past, both Congress and SSA have recognized that such proposals are neither beneficial to claimants nor administratively efficient for the agency.

We strongly support the submission of evidence as early as possible. The benefit is obvious: the earlier a claim is adequately developed, the sooner it can be approved and the sooner payment can begin. However, there are a number of reasons why closing the record is not beneficial to claimants including: (1) possible worsening of the medical condition which forms the basis of the claim; (2) the fact that the ability to submit evidence is not always in the claimant's or representative's control, e.g., providers delay sending evidence; and (3) the need to keep the process informal. Early submission of evidence also is necessary under current law which limits the ability to submit evidence and have it considered at the Appeals Council (must be "new and material" and relate to pre-ALJ decision period) and federal court (record closed; remand possible if evidence "new and material" and "good cause" for failure to submit earlier).

Filing a new application is not a viable option because it does not improve the process and may in fact severely jeopardize, if not permanently foreclose, eligibility for benefits. A claimant should not be required to file a new application merely to have new evidence considered where it is relevant to the prior claim. If such a rule were established, SSA would need to handle more applications, unnecessarily clogging the front end of the process.

**3. Representing the agency at the ALJ level.** We do not support efforts to have SSA represented at the ALJ hearing because past experience shows that it does not result in better decision-making and reducing delays, but instead injects a level of adversity, formality and technicality in a system meant to be informal and nonadversarial. In the 1980's, SSA tested, and abandoned, a pilot project to have the agency represented. It was terminated following Congressional criticism and a judicial finding that it was unconstitutional and violated the Social Security Act. In the end, the pilot did not enhance the integrity of the administrative process.

**4. Retain review by the Appeals Council.** We oppose the elimination of a claimant's right to request review by the Appeals Council. The Appeals Council currently provides relief to nearly one-fourth of the claimants who request review of ALJ denials, either through outright reversal or remand back to the ALJ. Review by the Appeals Council, when it is able to operate properly and in a timely manner, provides claimants, and SSA, with effective review of ALJ decisions. Given the low percentage of appeals to federal court, it appears that claimants largely accept decisions by the Appeals Council as the final adjudication of their claims. As a result, the Appeals Council acts as the initial screen for ALJ denials, a position for which the district courts are not equipped, given their other responsibilities.

**5. Access to judicial review in the federal court system.** We believe that both individual claimants and the system as a whole benefit from the federal courts deciding Social Security cases. Over the years, the federal courts have played a critical role in protecting the rights of claimants. The system is well-served by regular, and not specialized, federal judges who hear a wide variety of federal cases and have a broad background against which to measure the reasonableness of SSA's practices.

We urge Commissioner Barnhart to take these concerns into account in efforts to reduce the backlog in disability cases.

#### **SSI Childhood Disability / Examination of Disability Determination Process**

Over the last few years, SSA has engaged in a deliberate process to study how it assesses children with disabilities for purposes of the SSI program. These efforts have resulted in important clarifications and streamlining of the process, embodied in final regulations published in September 2000 which became effective in January 2001. SSA continues to evaluate its procedures regarding such things as the kind of evidence necessary to assess disability, including appropriate tests, and the kind of consultative examinations which will yield the most useful evidence. Knowledge gained through this evaluation, conducted in partnership with disability assessment experts through the Association of University Centers on Disabilities, can help inform SSA's future policy decisions regarding the childhood SSI program. We urge that this work continue. In addition, we urge that SSA consider adopting a similar approach to evaluate the way in which adults are assessed for purposes of eligibility in the disability programs.

#### **Improvements for Surviving Spouses with Disabilities**

We support the provisions in the Social Security Benefit Enhancements for Women Act of 2002 (H.R. 4069) to repeal the seven year restriction on eligibility for widow's and widower's insurance benefits based on disability. We believe that this provision and others intended to better protect widows and widowers are important improvements

#### **Supplemental Security Income Improvements**

##### **1. SSI Modernization Act of 2001**

The CCD Task Forces believe it is time to make important improvements in the SSI program and we support passage of the SSI Modernization Act of 2001, H.R. 739. This bill is an important and much needed step in increasing the ability of people with disabilities and the elderly to improve the quality of their lives. Many people with disabilities must rely on the Supplemental Security Income program for basic income support and the access it provides to critical medical services through Medicaid. Despite severe, lifelong disability requiring on-going support, many beneficiaries attempt to improve the quality of their lives through earnings. Others receive some income from their past employment efforts. Increasing the value of the small amounts of earned and unearned income to be disregarded by SSI will assist beneficiaries in improving their overall situation and will also reduce the administrative burden of dealing with small adjustments in payments. In addition, removing barriers to education will provide beneficiaries opportunities for further growth and potential for future work.

The SSI Modernization Act addresses several important areas designed to encourage work, savings, and education. These include: an increase in the general income exclusion; increase in the earned income exclusion; increase in the resource limits; and an increase in the irregular or infrequent income disregard. Each of these exclusions, limits, or disregards would be indexed for inflation so that the buying power of beneficiaries' income is protected. The bill would also ensure that children who are still in school, including those receiving special education services, would be allowed to finish their education prior to their assessment as adults for the SSI program. Finally, the bill would exclude the entire amount of educational grants from income and, for 9 months, from resources.

We believe that these modest, but important, improvements to the SSI program will assist beneficiaries while encouraging work, savings, and educational efforts. We believe that these improvements could also help people better meet their ongoing obligations, providing vital resources to fall back on for housing repairs and the like. We urge that SSA and Members of the Subcommittee support these improvements.

## **2. Medicaid Retention**

There is another issue also needing attention regarding retention of Medicaid when SSI benefits are lost upon entitlement to early retirement benefits. The Social Security Act requires SSI recipients to apply for any and all other benefits to which they may be entitled. Included in this group are a small number of recipients who are not eligible for Social Security Disability Insurance benefits because they were not currently insured at the onset of their disability but who are fully insured for retirement benefits, either on their own account or on the account of a spouse or ex-spouse. These SSI beneficiaries are required to apply for retirement benefits at age 60 or 62. Some of them have earnings records that result in a high enough monthly retirement benefit that renders them financially ineligible for SSI. The loss of eligibility for SSI for these recipients also results in a loss of eligibility for Medicaid, which is only partially averted where some states provide coverage for the elderly and people with disabilities with an income up to 100% of the federal poverty level. Because the beneficiaries are under 65 years of age, they are not entitled to Medicare benefits and often do not have the financial ability to pay for private health insurance. This result is particularly devastating to these former SSI recipients who are still disabled and are experiencing further deterioration in their health as a result of their increasing age.

The Act allows widows and widowers who lose SSI benefits upon entitlement to early retirement benefits to retain Medicaid coverage. 42 U.S.C. § 1383c(d). This protection should be extended to all SSI recipients who lose Medicaid upon entitlement to early retirement benefits. The number of individuals who would benefit from this extension is relatively small but the protection it would provide them is enormous. We urge the Commissioner and Members of the Subcommittee to support closing this gap through which they fall.

## **3. Expanding SSI Eligibility for Noncitizens**

The 1996 welfare law severely restricted the SSI eligibility of noncitizens lawfully residing in the United States. While legislative changes in 1997 and 1998 helped some individuals who entered before August 22, 1996, eligibility remains extremely limited for individuals who entered on or after that date. TANF reauthorization provides an opportunity for the Subcommittee on Human Resources to consider restoring equal access to SSI benefits, such as eligibility for lawfully residing immigrants with disabilities, with appropriate safeguards. We urge Commissioner Barnhart and Members of the Subcommittee to support these efforts.

## **Attorneys Fees in SSI**

In previous testimony (May 2001), the CCD Social Security Task Force urged the Subcommittee to support a statutory change, similar to the provision in Title II, that would allow SSI claimants to voluntarily enter into agreements with attorneys for SSA to withhold and provide direct payment of attorneys fees from their past due SSI benefits. We support such a provision because it will help ensure that claimants have adequate representation to appeal their cases. The reasons behind the withholding and direct payment of attorneys' fees in Title II cases apply with equal force to SSI cases.

We appreciate and support your inclusion, in H.R. 4070, of provisions to establish a similar mechanism in SSI. We also thank the Commissioner for increasing the maximum fee cap in Title II cases, an adjustment which had not occurred since 1990.

## **Representative Payee Improvements**

Approximately 6 million Social Security and Supplemental Security Income beneficiaries have representative payees, often family members or friends, who receive the benefits on behalf of the beneficiaries and have a responsibility to manage the benefits on behalf of these beneficiaries.

As favorably reported by the Subcommittee last week, H.R. 4070 includes provisions strengthening SSA's ability to address abuses by representative payees. The provisions would: require non-governmental fee-for-services organizational representative payees to be bonded *and* licensed under state or local law; provide that when an organization has been found to have misused an individual's benefits, the organization would not qualify for the fee; allow SSA to re-issue benefits to bene-

ficiaries whose funds had been misused; allow SSA to treat misused benefits as “overpayments” to the representative payee, thereby triggering SSA’s authority to recover the money through tax refund offsets, referral to collection agencies, notifying credit bureaus, and offset of any future federal benefits/payments; and require monitoring of representative payees, including monitoring of organizations over a certain size and government agencies serving as representative payees.

We support these provisions, including establishing the definition of “misuse” in the statute, rather than leaving it solely to administration policy. We believe that such provisions should be enacted. In addition, we believe that SSA should address the accountability of state or federal agencies who serve as representative payees and ensure that governmental agencies or institutions are not selected as representative payees where family or friends are available, willing, and capable to serve as payee.

#### **Limitation on Administrative Expenses**

SSA workloads are projected to begin increasing rapidly within the next decade as the baby boom generation begins to reach its peak disability years just prior to reaching early retirement age beginning in 2008. In addition, the SSA workforce is also aging and will begin to lose significant numbers of staff, including senior and leadership staff. About 3,000 employees are expected to retire per year from 2007 through 2009. SSA is also taking on new or more complex responsibilities such as providing increased rehabilitation and employment services for people with disabilities, completing and maintaining an appropriate schedule of continuing disability reviews and other eligibility reviews, and new approaches to prevent fraud and abuse. In FY 1985, SSA’s staffing levels were 80,844 FTEs and 83,406 workyears. The President’s budget requests for FY 2003 include 63,464 FTEs and 64,730 workyears, for a reduction of 17,380 FTEs and 18,676 workyears over the last 18 years.

The CCD Social Security Task Force has voiced concern for some time over the continued long-term downsizing of the SSA workforce. We believe that failure to conduct appropriate and timely CDRs and other eligibility reviews could lead to decreased trust in the integrity of the Social Security and SSI programs. In addition, the new efforts to assist people with disabilities to go to work, through the Ticket to Work and Work Incentives Improvement Act of 1999, require new and expanded approaches for SSA interaction with beneficiaries. Adequate staffing levels are critical for these and other efforts to be successful, especially given the coming disability and retirement years of baby boomers.

For these reasons, we strongly support removing the Social Security Administration’s Limitation on Administrative Expenses (LAE) budget authority from any domestic discretionary spending caps. Even if the LAE were removed from the domestic discretionary caps, SSA’s LAE would still be subject to the annual appropriations process and Congressional oversight. Currently, SSA’s administrative expenses total less than 2% of benefit payments paid annually. Congress would still maintain its role in ensuring continued administrative efficiency.

Most importantly, removal of the LAE from the domestic discretionary spending caps would remove it from competition with other health, education, and human needs programs for limited funds. It would allow for growth that is necessary to meet the needs of the coming baby-boomer retirement years (including the retirement of SSA and state DDS personnel); continue the efforts to improve the processing time for initial applications and appeals; continue the efforts to ensure integrity in the program through CDRs and other redeterminations; and allow for replacement of staff in a timely manner to allow for adequate training and mentoring.

---

Thank you for this opportunity to testify on the challenges facing the Commissioner of Social Security. We look forward to working with the Subcommittee and Commissioner Barnhart in addressing these challenges affecting people with disabilities.

---

Chairman SHAW. Thank you, Ms. Ford. Ms. Kennelly?

**STATEMENT OF THE HON. BARBARA KENNELLY, PRESIDENT  
AND CHIEF EXECUTIVE OFFICER, NATIONAL COMMITTEE TO  
PRESERVE SOCIAL SECURITY AND MEDICARE, AND FORMER  
MEMBER OF CONGRESS**

Ms. KENNELLY. Good morning, Chairman Shaw and Congressman Matsui.

I am Barbara Kennelly, and I am the new President of the National Committee to Preserve Social Security and Medicare. We have millions of members and supporters across this country. We are a grassroots advocacy group, and we are an educational organization.

Mr. Chairman, Congressman Brady, also, and of course Ranking Member Matsui, thank you for your leadership on Social Security issues. I really appreciate the opportunity to testify this morning.

I have just begun a new job, as the other new President I think has, too, and I had planned to come and ask you to see me individually because I really value your expertise. However, getting this invitation to appear before a Committee that I served on for 16 years, I just could not turn it down.

I am pleased to be here, also, with Social Security Commissioner Jo Anne Barnhart. I have known her in her other life, as she has known me, and I wish her success at the helm of the Social Security Administration. I anticipate working with the Commissioner, as I anticipate working with this very important Subcommittee.

As a former Ranking Member of this Subcommittee, and more recently counselor to Commissioner Apfel, and Associate Commissioner of Retirement Policy, some of the staff here that I have worked with, I have a strong sense of challenge facing and understanding what is facing Commissioner Barnhart.

Chairman Shaw, I know that under your leadership the Subcommittee has had a very full agenda, and we share your concern about the misuse of personal data held by Social Security, and we applaud your efforts to highlight the continuing response of SSA to those who were directly affected by the events of September 11.

The SSA remains one of the most effective agencies in the Federal Government. Each year, SSA efficiently tracks the lifetime wages of almost every American worker and then sees that 46 million of these Americans get their benefits. In the short-term, Commissioner Barnhart faces the challenge of ensuring that the Agency continues the success. In the longer term, the Commissioner faces a demographic, technological, and management policies that face the Agency. May I speak to a few of these pending SSA retirements?

We know that by 2009, half of the workforce of Social Security will be eligible for retirement. Even more importantly, the senior management at the end of this decade, practically half of the senior management, will also be eligible for retirement, and of course this means a great change in the leadership of the Agency.

I also want to speak about streamlining access to benefits. The burden on SSA is lightened when the public accesses benefits and information electronically, through e-mail, the Internet, and direct deposit for beneficiaries. These new technologies can also add convenience. However, we have to be very careful that those people who are seeking help from Social Security know that they also can

speak to somebody personally if, in fact, it is necessary. For a variety of reasons, direct human contact is important, particularly when so many of these people are elderly, bereaved or disabled.

Having said that, we have to be very careful about how we move into the electronic age, and knowing that the Committee should not have goals so high that they can't be reached, let me please join with the Commissioner in her commitment to processing disability claims. I will never forget the first day I went to one of the offices where the claims are processed, never forget seeing the overloaded file cabinets, never forget seeing the files from floor to ceiling, bins full of files.

I can't tell you the number of calls I got from the administration, from old friends, who were so delighted that the new Commissioner had decided to make the disability claim operation one of her priorities. I really feel, unless it is a priority, nothing can really happen to improve it. More importantly, I don't think, if we didn't have the technology changes we have, that we could ever address the situation. So, I salute the Commissioner, and I know I could hear from all you had to say this morning and what the Congressmen said, that you are willing to back her completely because we all know this is a very serious problem.

Privacy. It is because Social Security has been such a successful universal program that the number has become overused for identity purposes. We applaud the Agency for its tremendous support of the investigative efforts, following the recent attacks on our Nation. Balancing national security interests, however, with personal privacy will be a big challenge for SSA, and you will have to determine what the role is in the new implementation of the USA Patriot Act, which is a whole other subject.

Inequities in the current system. We applaud the efforts of this Subcommittee to address existing inequities in the present Social Security benefit structure. Thank you, Mr. Chairman, for your leadership in repealing the earning limit for seniors over 65. That was absolutely wonderful. Talked about for years, but you and your Committee did it, and I thank you, and the people across this country thank you.

Another major challenge will be to address the real disadvantages women face under our current system, and this is one of the reasons that I took the present job that I am holding. Women remain our society's primary family care-givers and spend more time of their working years outside the workforce. When they are working outside the home, they still earn less than men, on average, even for a similar job. For similar reasons, women generally do not have the same access to pensions. One sensible reform would be to leave out the benefit calculations any years where an individual had zero earnings due to family care-giving responsibility. A higher benefit for surviving spouses should also be enacted, and we are all pleased to see some promise in this improvement in the area because of your introduction with Mr. Matsui of H.R. 4069.

Social Security solvency. The greatest challenge facing Social Security is the need to ensure the long-term solvency for future generations. As you have this hearing today talking about the day-in/day-out work of the Social Security Agency and how you, as a Committee, can back that work of the Agency, we have to know that

the National Committee understands that really the major emphasis has to be, for all of us, the whole solvency question.

We are going to have debates over this, but these are for another day, and we will have honest disagreements. The fact of the matter is, I think we have been given another opportunity. When I was in the Congress, we had the Commission that came in with a report and had three answers, and now we have a new Commission that comes in with three answers. So, we have another opportunity to debate the whole question of solvency. There are, as I said, disagreements. However, what we can all agree on is that we do it sooner rather than later. We remember, we were on the Committee when we had the 1983 reforms, and we remember some of the drastic things that had to happen, the first time to attack Social Security, the first time the young people who are collecting Social Security and then went to college, after 18, it was shut off, and that was no longer there. Of course, we know we had the raising of the age from 65 to 67.

I also trust our new Commissioner will work to ensure that Americans of all ages become better educated about the value of Social Security in their lives. Too many people believe that myth that it won't be there when I get older. The fact of the matter is that the actuaries have come in and said we can be fiscally sound to 2041 now. So, I hope we can all come together to understand how we can make sure that people know any developed country in this world has to have a core retirement program.

So thank you, Chairman Shaw and Members of the Subcommittee, for having this hearing. I feel like I have come home. I look forward to being again active in Social Security.

Thank you very much.

[The prepared statement of Ms. Kennelly follows:]

**Statement of the Hon. Barbara Kennelly, President and Chief Executive Officer, National Committee to Preserve Social Security and Medicare, and former Member of Congress**

Good morning Chairman Shaw, ranking Member Matsui and distinguished members of the Subcommittee. I am Barbara Kennelly, President and Chief Executive Officer of the National Committee to Preserve Social Security and Medicare. With millions of members and supporters across America, the National Committee is a grassroots advocacy and education organization devoted to the retirement security of all citizens—from the “twenty-something” generation and baby boomers to the nation's 34 million seniors.

Mr. Chairman, Ranking Member Matsui, thank you for your leadership on Social Security issues. I appreciate the opportunity to testify today. This is a fitting debut in my new position, and an ideal way to begin my tenure at the helm of the National Committee. I look forward to working closely with both of you and all of the Members of the Committee. Hopefully you will allow me to visit with each of you. Your expertise is invaluable to me.

I am also pleased to be here with Social Security Commissioner, Jo Anne Barnhart. I wish her success in leading the Social Security Administration (SSA) upon which millions of people rely for their earned benefits, and that most others look to as a financial safety net that will be there when they need it. We anticipate working with the Commissioner and with this important Subcommittee to ensure that Social Security continues to meet the needs of working Americans and their families.

As a former Ranking Member of this Subcommittee, and more recently Counselor to Commissioner Apfel and Associate Commissioner on Retirement Policy at SSA, I have a strong sense of the challenges facing Commissioner Barnhart. Those challenges include the following:

- Pending retirements at SSA;

- Streamlining and modernizing access to benefits and information;
- Eliminating unnecessary delays in the disability claims process; and
- Ensuring the long-range solvency of the Old Age, Survivors and Disability Insurance programs.

Chairman Shaw, I know that under your leadership, the Subcommittee has had a full agenda. We share your recent concern about the misuse of personal data held by Social Security, the misuse of benefits by representative payees, and we applaud your efforts to highlight the continued response of SSA to those directly affected by the tragedies of September 11.

SSA has many strengths. It is one of the most effective agencies in the Federal Government. Each year, SSA efficiently tracks the lifetime wages of nearly every American worker. Each month, the agency sends out benefits for over 46 million Americans with clockwork efficiency. All this, including the claims processing, is done with administrative costs of less than 1 percent. SSA provides service to the American people with a level of success that rivals the performance of the best companies in the private sector.

Americans not receiving a check still benefit from the program's disability and survivor insurance provisions. Each year, 135 million working Americans rely on Social Security for disability insurance. In fact more than 30 percent of Americans receiving a monthly check from SSA are non-retirees. Each month, about 4 million children and 5 million disabled workers receive benefits.

In the short term, Commissioner Barnhart faces the challenge of ensuring that the agency continues to efficiently provide benefits that keep millions of people out of poverty. In the longer term, the Commissioner faces the demographic, technological and management challenges I mentioned earlier. I would like to discuss those challenges in greater detail.

#### **Pending SSA Retirements**

One major reason for the success of SSA is its skilled and dedicated workforce. By 2009, over half the agency's 63,000 employees will be eligible for retirement. SSA may also lose most of its senior management to retirement by the end of this decade, just as the agency's workload is expected to dramatically increase. Initiatives are underway to prepare for this, but the agency needs additional resources to remain ahead of the curve and ensure seamless public service.

#### **Streamlining Access to Benefits**

The burden on SSA is lightened when the public accesses benefits and information electronically, through e-mail, the Internet, and direct deposit for beneficiaries. These new technologies and new ways of reaching beneficiaries provide cost savings to the agency and convenience for those who are served. We need to improve on the fact that only 3.5 percent of retirement claims are handled over the Internet. However, I urge the Administration not to set an overly ambitious goal. Many seniors are adept at using the web, but for many, there is a reluctance to embrace the new technology. The goal of raising the level of Internet or automated telephone service delivery to 67 percent by 2005 should be reviewed.

For a variety of reasons, conventional means of accessing benefits, assistance and information should always be an option for those who choose it. Beneficiaries should be able to speak or write to an agency representative in person about a problem if they need to do so. This kind of access puts a human face on the agency and enhances public confidence in the program. Hence, it is imperative that resources continue to be directed toward this type of personal service, including maintenance of existing local and regional offices.

#### **Eliminating Unnecessary Delays**

The excessive lag time in processing disability claims, particularly appeals from a denial of a disability claim, is clearly an issue that demands attention. The process of evaluating a claim is inherently complex and the current system is antiquated. We can all agree that lag time in handling these claims is an issue that needs our attention now before it becomes more acute. This is one area where I believe that new technologies will be of great help. Mr. Chairman, we salute you and your staff who have devoted considerable time and effort to address this problem. We are pleased to see that these efforts to improve in this area are a high priority for the Administration as well.

#### **Privacy**

Thank you also for your efforts to ensure the integrity of beneficiary information and to prevent the misuse of the Social Security number. It is because Social Security has been such a successful universal program that the number has become

overused for identity purposes. Use of Social Security cards must be limited to the accounting and records purposes of the Treasury Department and activities that are related to the mission of SSA. We salute the agency for its tremendous support of the investigative efforts following the recent attacks on our nation. Balancing privacy with broader public needs remains a big challenge as SSA considers its important role in the implementation of the USA PATRIOT Act.

#### **Inequities in the Current System**

We applaud the efforts of this Subcommittee to address existing inequities in the present Social Security benefits structure. Thank you Mr. Chairman for your leadership in repealing the earnings limit for seniors over age 65. We also appreciate your efforts in advancing the debate on the Government Pension Offset. The reform of the Government Pension Offset would address a long-standing unfairness.

In addition to the Government Pension Offset, there is a second issue that is particularly sensitive to women: the Windfall Elimination Provision. As you know, Congress created a modified formula for determining monthly Social Security benefits to eliminate any windfall to individuals who worked in jobs that were not covered by Social Security, but receive benefits that were computed as if they were long-term, low-wage workers. We believe that the Windfall Elimination Provision should be modified.

It is my hope that we can move to address the real disadvantages women face under our current Social Security system. Women remain our society's primary family caregivers, and they still earn less than men on average, even for similar work. Also, for the same reasons, women generally do not have the same access to pensions or other types of retirement income. One sensible reform would be to leave out of the benefit calculation any years during which an individual had zero earnings due to family caregiving responsibilities. An increase in the benefit for surviving spouses should also be considered as well as a restoration of the minimum benefit. We are pleased to see promise for improvement in some specific women's benefit issues through the introduction of your legislation, H.R. 4069, the Women's Benefits Improvement Act.

#### **Social Security Solvency**

I hope that we all can agree that the greatest challenge facing the new Commissioner is her role in the effort to ensure the long-term solvency of the retirement and disability trust funds for future generations.

Assuming no changes, Social Security will be fiscally strong for the next 39 years. Beyond 2041, however, tough choices will need to be made to close the projected 29 percent solvency gap. Every generation must be guaranteed full benefits. The National Committee does not support efforts to partially privatize Social Security. We oppose the transformation of Social Security from an insurance program that offers everyone a defined benefit to an investment vehicle based on a defined contribution that favors those with higher incomes and uninterrupted work histories. We share the Administration's desire to create new opportunities for younger workers to save and invest. But we believe that personal savings and investment must be in addition to the current baseline benefit provided by Social Security.

There are honest disagreements over how best to ensure the future solvency of the Social Security program, but I can safely say there is at least one point on which we can all agree: the sooner decisions are made, the easier they will be to implement and the less painful they will be for all stakeholders. We also believe that the debate over how improve the solvency of the Social Security program should include the broadest possible range of alternatives. The Commissioner of Social Security must be an integral part of this debate as well.

#### **Public Education**

I trust that our new Commissioner will work to ensure that Americans of all ages become better educated about the value of Social Security in their lives. Too many younger Americans are encouraged to question whether Social Security be there for them when they retire, without understanding that it is there for them now, as insurance should they or their parents die or become severely disabled. Social Security not only lifts more than half of our nation's retirees above the poverty line, it provides protection and financial relief to Americans of all ages against the "hazards and vicissitudes of life." I feel confident that Commissioner Barnhart's agenda will include an educational endeavor to help current and future beneficiaries understand the value of the Social Security program in our daily lives.

Thank you Mr. Chairman for holding this hearing and extending this opportunity to speak. I also want to thank you for your strong leadership on this Subcommittee and your sustained work to improve the performance of the agency. On behalf of the millions of members and supporters of the National Committee to Preserve So-

cial Security and Medicare we look forward to working with you, your colleagues, and Commissioner Barnhart as you move forward in the 107th Congress to accomplish your mission.

Chairman SHAW. I might add you look very comfortable in this room.

[Laughter.]

Chairman SHAW. Mr. Matsui?

Mr. MATSUI. Thank you very much, Mr. Chairman. Thank you for yielding to me.

I want to, first of all, thank all of you for your testimony, and I want to thank Mr. Shaw for having this hearing today. I am going to have to leave, so I will not be able to ask questions and stay for the balance of it, but I thank all of you very much.

Thank you, Mr. Shaw.

Chairman SHAW. Yes, sir. Mr. Brady?

Mr. BRADY. Thank you, Mr. Chairman.

First, I want to thank the panel not just for being here today, but reading through the testimony ahead of time, it is clear that you identified not only problems that we need to work on, challenges, but solutions as well, and that is really very helpful for this Committee and the staff as we try to move forward on this.

I really had wanted to inquire of our two former Members of Congress and our President-Elect for AARP, Ms. Smith, and our Co-Chair, Marty Ford. It seems to me that we have got a number of challenges before us. Some of them are emerging challenges that are a part of a process improving Social Security the way it works today, the other are longstanding problems, the solvency of Social Security, how to preserve it once and for all.

My question to you is, in a Congress so evenly divided in both chambers or evenly balanced, however you look at it, how important is it or maybe the reverse is true, what are the chances of Congress successfully improving and reforming preserving Social Security? How likely is that to happen if both parties won't work together to do it? It seems to me that it is not just election-year politics any more, it is 24/7 politics that seems to be the biggest single obstacle for us really working together to reform Social Security.

It seems to me there are some good ideas out there on how we can really address this in a good, thoughtful debate, but they get no air. They get no oxygen. There is no chance for real scrutiny and debate, and my people back home, they want to talk about these options. They want to hear about them, they want to think about them, and they want to give it back to us.

So, my question to you is what are the chances of us succeeding in improving and preserving Social Security without us working together to do it? I would open it up to the floor.

Ms. KENNELLY. I will begin. First of all, we know that no major legislation can ever get really passed if there isn't some kind of bipartisan coming together. I think everyone here understands calendars, and there is probably nothing obviously going to happen, other than a lot of talk, between now and Election Day. Having said that, we also continue to understand calendars, and I think there is an understanding that in a Presidential election year, it

might not happen. So, you have that window of opportunity after your next election to truly address this issue.

All of us who have been so familiar with Social Security are very familiar with the list of incremental changes that can be taken to try to put out the years when the Social Security needs additional funding. We are very familiar with them. So, I wouldn't have taken this job, Congressman, if I despaired. I really think in that year after the election, of this coming election, that there is an opportunity, with all of the information and the interest, that we can address or you can address this thing and work together. As I said, I remember 1983 when it did happen.

Mr. BRADY. Thank you.

Ms. SMITH. I would like to respond.

I remain optimistic because I think that, at the end of to day, no matter what party you belong to, you will remember that we are dealing with people. We are dealing with human lives. We are dealing with our frail elderly, our disabled. I know, I have total confidence that, when all else fails, we are going to come to that point and say we are going to take an action. We will be strong.

As has been mentioned already, we know all of the possible solutions to this. It is just a matter of grabbing a hold to one or two, however you want to handle it, but it is the people, and they are going to badger us. They are going to badger AARP. They are going to badger their representatives, and you know how it is like a bull dog—

Mr. BRADY. Yes, we know that.

[Laughter.]

Ms. SMITH. We will come to you and all of the agencies that represent the different groups because the voices are getting louder, and louder and louder.

Mr. BRADY. Thank you.

Mr. DAUB. I think you asked the \$64-million question. I am not so sure it would be any less difficult if the partisan division were skewed, given the nature of this issue. So, I have three suggestions for you and for the Committee.

First of all, I think that Members of Congress themselves, and I say this having been one, need to address the issue by understanding Social Security better than many do, and therefore be less inclined to emotionally respond to a constituent or to a media source when they discuss terms like lockbox or the meaning of the trust fund or that there is really no money there, it is just a bunch of paper and IOUs, and so forth, and so forth. That is an indication of being misinformed, and that, in turn, I think creates a misunderstanding in the public. I think that creates some of the gridlock then that ultimately afflicts the congressional ability to legislate.

Mr. BRADY. So, we are part of the problem.

Mr. DAUB. I think that Members of Congress who often get asked in their townhall meetings about Social Security need to work harder at understanding the system of the Certificate of Indebtedness and that the document that represents the earnings record really can be found in a safe, in a vault in the Bureau of Public Debt in the hills of West Virginia, that it does exist, there

is an accounting system and that it is dependable. So, I think that is the first recommendation.

The second one is that any effort that Congress makes, particularly because of the even division between parties, needs to be comprehensive. This is a very complex set of issues, and they are all interrelated. The four Trust Funds relate to Old-Age Survivors and Disability, part A Medicare, and part B Medicare. part B Medicare is financed by general fund revenues, plus a premium. Medicaid is a Federal-State, 60-40 match, and SSI, is fully funded by general revenue of the U.S. Department of the Treasury. They all interrelate. These programs represent a huge amount of outlay, in terms of the totality of the Federal budget, so there should be a comprehensive solution, rather than a picking away at it.

The third and last one, is stewardship. This is a 67-year-old program. Some people a long time ago summoned the courage to make sure it worked well for many decades ahead. We need now, as is said, sooner, rather than later, to summon the courage, in a bipartisan way, to act comprehensively rather than let the problems get worse.

Mr. BRADY. Mr. Chairman, do you think I could get 1 minute for Ms. Ford to respond real quick?

Chairman SHAW. Yes, please be brief. We were instructed to conclude this hearing by 11:00 by the Chairman, but perhaps he won't know.

[Laughter.]

Ms. FORD. My response will be brief.

I just want to say that, in the history of disability law and policy, we have never had any real progress on any issue, unless it has been bipartisan. So, we definitely have hope that we will get there in a bipartisan way. We think it is the only way to approach it.

Chairman SHAW. I have been asked, both by friends and foe alike, about why I haven't pushed the agenda forward, and the problem is that we have not, as of this date, put together the bipartisan spirit that is going to be necessary to solve this problem. I am particularly pleased to see Barbara where she is, and Hal where he is, as Members of Congress, understanding the politics of the situation.

I would also like to say that, as Mr. Daub said, I would venture to say over half the Members of Congress do not understand how the Social Security system works. I would have to say that I have learned a lot, since I have been Chairman of this Subcommittee, that I would like to share with the other Members of Congress because it is very important and vital that we do understand it.

Any thought or any discussion regarding privatization of a Federal obligation is pure nonsense. Social Security is a Federal retirement program, and it is going to stay a Federal retirement program run by the Federal Government. We need to add onto it, but we do not, in any way, and I will not stand by and allow the integrity of the basic system to be, in any way, interfered with. It needs help. We need to add to it, but we need to keep the basic system totally in place, as the ultimate safeguard for tomorrow's retirees, as well as today's retirees.

I look forward to that private meeting that you are talking about, Barbara. I would like very much to discuss this with you.

Ms. KENNELLY. Thank you, Congressman.

Chairman SHAW. You mentioned, in your comments, that the young people are, more or less, saying in despair it is not going to be there for them. They ought to be madder than hell about it, and they ought to be on our doorsteps demanding, the young people in this country, demanding that we do something about it because they will be members of AARP. The AARP not only represents today's seniors, but they also have a conscience for tomorrow's seniors.

You are coming here, Ms. Smith, from Hawaii—

Ms. SMITH. That is right.

Chairman SHAW. Is certainly great evidence of your concern for this. I know that AARP does not want to take sides in a debate. However, I would hope that you would add your voice to those that demand Congress do its job and get this done.

Ms. SMITH. We plan to do that.

Chairman SHAW. Unfortunately, I am afraid that we are not going to be able to get the bipartisanship that is necessary until after the next election. I would be delighted if I could get that, but it just doesn't seem to be in the cards for between now and November.

As Chairman of this Subcommittee, I may very well, if we haven't moved the ball, I may very well call back and ask the Members of the Subcommittee to come back in November and start the dialog that is necessary. We cannot afford to wait. There is a very narrow window of opportunity. Once we get over into 2004, it is going to be chaos in trying to get something done. So, we have got to do it either the end of this year or the very beginning of next year, and that is my intention for this Subcommittee, as I feel this is vitally important.

We do not have a cash problem until 2017. However, the longer you wait, the more difficult it is going to be to find the solution and hold the benefits exactly where they are, which is my intention, and that is the intention I think of most of the Members of Congress.

We do not need to adjust the cost of living. We do not need to, in any way, affect the age of retirement at this particular time. That is something that this Congress should not, and will not, have to face, and neither will the next Congress, if I have my way about it, but it is time I think for us to sit down and really work for it.

The purpose of this hearing was to be able to streamline and to offer better service to the people we all work for, and I think this is something I am very encouraged by your presence and each of your testimony. It was very clear and succinct, and I appreciate your taking the time to be here.

Chairman SHAW. Thank you very much. This hearing is concluded.

[Questions submitted by Chairman Shaw to the panel, and their responses follow:]

Social Security Administration  
Office of the Inspector General  
Baltimore, Maryland 21235  
*June 24, 2002*

The Honorable E. Clay Shaw, Jr., Chairman,  
Subcommittee on Social Security  
Committee on Ways and Means  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Shaw:

Thank you for the opportunity to testify before the Subcommittee on Social Security regarding challenges facing the Commissioner of Social Security. Please find enclosed our responses to the following questions posed in your May 28, 2002 letter.

The Agency has taken several steps to improve the Social Security numbering process and provide for secure claims over the Internet. We will continue to monitor the Agency's efforts in both of these projects.

If you have any questions about our response, please call me or your staff may contact H. Douglas Cunningham, Special Assistant, at (202) 358-6319.

**1. Are you satisfied with the progress the Agency is making relative to improving the Social Security numbering process? What progress is being made with other agencies, particularly the Immigration and Naturalization Service (INS), in addressing the documentation for immigrants entering our country?**

We are encouraged by the steps the Agency is taking to improve its enumeration process, and we believe Commissioner Barnhart is committed to strengthening related policies and procedures.

For example, the Social Security Administration (SSA) has implemented verification of birth records before enumeration for all applicants age 1 and over for original Social Security numbers (SSNs). Also, SSA lowered the age tolerance from 18 to 12 for mandatory interview procedures. Further, in July 2002, the Agency plans to begin verifying all noncitizen evidentiary documents before issuing SSNs, with full implementation by the end of the year.

We are also encouraged by the progress SSA is making with other agencies in addressing the documentation for immigrants. SSA continues to work with INS and the Department of State (DoS) to resolve issues involving enumeration. SSA has taken steps to expand document verification by providing its field offices (FO) manual access to DoS' Refugee Data Center and is working to provide its FOs online access to INS' Non-Immigrant Information System (NIIS). SSA is working with INS and DoS to implement the initial phase of the Enumeration at Entry program, which would reduce the probability of SSA improperly assigning SSNs to immigrants.

The Agency has formed several enumeration-related workgroups and continues to explore other areas to improve the integrity of the SSN. We will continue to monitor the Agency's efforts to ensure it meets all established milestones and that no significant delays occur.

**2. There is potential for fraud when the Agency is dealing with "faceless" persons across the Internet. As pressures to deliver service through the Internet grow, how is SSA protecting the process from fraud? How can the Agency be sure when a person on the Internet claims to be an eligible individual and applies for benefits, that they are dealing with the right person and won't send benefits to the wrong person?**

We agree with your assessment that the Internet will be the foundation of the Agency's future information technology initiatives. The United States is the world's leading Internet nation, with over 110 million users. By some estimates, worldwide Internet traffic is doubling every 100 days. The baby-boomer generation is more technologically aware than any previous generation. It is estimated that three-quarters of Americans under the age of 60 use the Internet at work or at home. We are only beginning to see the extent of changes that it will bring.

Advances in technology, public expectations, Congress' mandate in the government Paperwork Elimination Act<sup>1</sup> (GPEA) and the President's Management Council, all require that SSA move expeditiously to adopt electronic processes. By 2005, SSA expects to make 60 percent of its customer-initiated services available electronically through automated phone services or the Internet. Presently, the Agency allows customers to key in portions of their title II retirement and disability claims

<sup>1</sup>P.L. 105-277, sections 1701-1710

electronically. However, once the claimants complete their keying, they are required to print out, sign and mail to SSA their application with necessary proofs. Some of the internal controls regarding this process are as follows,

- SSA requires that these Internet applicants elect direct deposit. This allows the Agency to “share the burden” with the financial institutions and the Department of the Treasury. The name on the incoming electronic funds transfer payment must match the name on the financial institution’s account. Most banks require some form of picture identification to open an account. This provides additional assurances about the applicant’s identity.
  - SSA checks the SSN against its Numident file. If the name or date of birth on the incoming Internet claim does not match the Numident, SSA investigates the matter.
  - SSA still requires a birth certificate, military service papers, wage report (W2), marriage certification, etc.
  - A substantial number of the Internet applications do still involve contact with an SSA employee. In addition, if SSA has any concerns about the validity of the application, they are supposed to make personal contact with the applicant.
  - SSA has an automated Earnings Enforcement Operation (EEO) which identifies incorrect benefit payment situations under the Retirement and Survivors Insurance (RSI) programs that result from a beneficiary’s earnings. If SSA is paying benefits to a non-disabled beneficiary and wages are posted to that record, SSA will determine if an overpayment or underpayment exists and make the necessary adjustments to the record. Additionally, SSA has a Continuing Disability Review Enforcement Operation (CDREO) which is designed to identify disabled beneficiaries that have potentially substantial earnings after disability onset. SSA investigates these cases to determine whether cash benefits and/or disability entitlement should end.
- If there is any indication of fraud, SSA will refer the matter to the OIG.

Furthermore, when SSA converts or adopts new procedures to perform specific business processes electronically, it conducts a risk assessment, as prescribed in the Office of Management and Budget’s (OMB) Procedures and Guidance for Implementation of the GPEA. In planning and selecting appropriate procedures and electronic signature technologies, SSA policy calls for it to consider factors associated with traditional paper-based processes, such as originator authentication, message integrity, non-repudiation, and confidentiality. SSA procedures also call for the consultation of outside privacy experts to opine on the Agency’s ability to maintain the privacy of its beneficiaries’ data.

We have asked SSA to consider one additional safeguard concerning the verification of claimants. Because the application of benefits/taking of claims and the verification of a claimant are at the heart of the Social Security system, we have asked SSA officials to consider requiring claimants to prove their identity in person before payment of benefits begins. Because we believe this safeguard, like others, should be assessed based on its merits, we have asked SSA to consider this aspect of identification as part of its overall risk assessment of the claims taking process.

As SSA and other agencies proceed toward adopting electronic transmission and storage of information, the importance of legal considerations also increases dramatically. As a result, the Department of Justice (DoJ) has issued a guide<sup>2</sup> for Federal agencies to assist them with the legal considerations in designing and implementing electronic processes into their systems. We strongly believe and have recommended to SSA officials that the Agency follow, to the extent practicable, DoJ’s Guide. The Guide explains the legal issues the Agency is likely to face in designing electronic-based processes, examines four overarching legal issues that should be considered with respect to converting any given type of system or operation, and discusses general and specific steps agencies should consider in converting to electronic processes.

There are always risks, however, in conducting electronic commerce, despite the Agency’s efforts to identify and mitigate them. SSA will have to keep privacy and security concerns at the forefront of its planning efforts by continuing to work closely with privacy experts and consultants. SSA will have to use a variety of tools to protect the public’s information, such as data matching, personal identification number/password, public/private key tools, encryption, firewalls, digital signatures and biometrics. Secure access to SSA’s facilities and its multiplatform environment, as

<sup>2</sup>*Legal Considerations in Designing And Implementing Electronic Processes, A Guide For Federal Agencies*, United States Department of Justice, November 2000.

well as secure electronic access to SSA's records, will be a top priority to ensure it complies with the Presidential Decision Directives 63<sup>3</sup>, which deals with critical infrastructure protection, and 67<sup>4</sup>, which is concerned with continuity of government operations.

GPEA seeks to preclude agencies from systematically treating electronic documents and signatures less favorably than their paper counterparts, so citizens can interact with the government electronically (S.Rep. 105-335). GPEA states that electronic records and their related electronic signatures are not to be denied legal effect, validity, or enforceability merely because they are in electronic form. SSA has taken a proactive position regarding the future use of electronic signatures and is evaluating the use of digital signature, under a limited proof of concept basis, in areas other than benefit claims.

- The Office of the Inspector General (OIG) has also taken a proactive position with respect to the Agency's use of electronic commerce and electronic signature in the following manner
- Provided training on Internet and Web Security to the OIG's System's team and key SSA officials and their staffs.
- Directed OIG personnel to sit on numerous Committees at SSA that initiate and approve electronic commerce system development projects and implement policies and procedures that use electronic commerce.
- Advised SSA officials and their staffs on security requirements impacting electronic commerce.
- Asked my legal staff to be available to consult with SSA on matters of electronic commerce and signature requirements.
- Directed our financial statement audit contractor to conduct an audit of the internal controls of SSA's Web-based systems over the last 2 Fiscal Years.
- Conducted on-going audits involving systems security that will include a review of SSA's system development life-cycle management practices of its Web-based systems.

Sincerely,

James G. Huse, Jr.  
*Inspector General*

AARP  
Washington, DC 20049  
*June 24, 2002*

E. Clay Shaw, Jr., Chairman  
House of Representatives  
Ways and Means Committee  
Subcommittee on Social Security  
Rayburn House Office Building B-317  
Washington, DC 20515

Dear Chairman Shaw:

I was pleased to testify on behalf of AARP at the May 2, 2002 Subcommittee hearing on the challenges facing the Social Security Commissioner. I also appreciate the opportunity, in response to your May 28th follow-up letter, to provide you with additional information regarding our members' views on the Social Security Administration's (SSA) 800 number service and public awareness about the Social Security program. Since AARP Membership begins at 50 and many of our members are in their nineties, there are age-based differences among our members in both areas. When necessary, I will differentiate among them.

**1. You discuss AARP's concerns for telephone service. Can you tell us more about what your members are experiencing, how important this service is to them and any suggestions for change you may have?**

AARP's younger members are accustomed to securing information via the telephone and generally find SSA's 800 service useful—unless they experience delays. Some older members are less familiar with accessing information over the phone and have difficulty navigating through the system. As well, some people are hearing impaired or have physical or mental difficulties that prevent them from using the

<sup>3</sup> Issued May 22, 1998

<sup>4</sup> Issued October 21, 1998

800 number. Some AARP members, particularly those over age 65, have commented on the need for greater courtesy (e.g., that some 800 number staff are rude or curt).

A well functioning 800 number requires that SSA receive sufficient funding. Inadequate resources lead to staff shortages and incomplete training for those who answer the phone. AARP urges that SSA's administrative expenses be removed from any congressionally established, discretionary spending cap. The agency's administrative costs are paid with Social Security trust fund dollars, not the general revenues that finance other programs, and therefore should not be subject to the spending cap.

**2. In order for us to reach bipartisan agreement on how best to strengthen Social Security, the views of our constituents are so important. Their knowledge about the challenges Social Security faces and the options for change is extremely important to advance the debate. Based on your experiences with your members, where are the information gaps? How do you see SSA addressing those information gaps, and what recommendations would you have for ways SSA could better educate the public?**

In general, AARP members are better informed than the rest of the public about how Social Security works. This could reflect coverage of Social Security issues in our publications and AARP's public education efforts throughout the country. Knowledge about Social Security among AARP members (and the public) is directly related to age, with younger members having less knowledge. Our younger members, especially those who work, may have less interest in and/or time to learn the fundamentals about Social Security and less experience with the program.

Regardless of age, the biggest information gap involves the current financial status of the program and the Social Security trust funds. A minority of our members understand Social Security's financing, but most members are unaware of Social Security's true financial health (e.g., that Social Security has sufficient assets to pay full benefits until 2041 and over seventy percent for decades thereafter).

Many older members confuse Social Security and Supplemental Security Income (SSI) benefits. They mistakenly believe that some who did not contribute for themselves (and their dependents) are receiving Social Security benefits. We have long worked to explain the eligibility differences between the two programs and their distinct revenue sources, but the information gap persists.

Working AARP members underestimate the program's value for themselves and their dependents and are largely unaware of Social Security's survivor and disability benefits. While SSA's annual statement provides workers with useful information about retirement, survivor and disability benefits, not all workers read the material.

Without sufficient resources, SSA has had to curtail some of its public outreach programs. SSA's website has helpful information for Internet users, but many individuals do not have access to the worldwide web and others do not know about the site and what it provides. Moreover, an Internet site is not a substitute for face to face contact with an SSA representative.

As part of its outreach effort, SSA has been emphasizing the importance of supplementing Social Security with additional savings. This is an important message that hopefully will encourage today's worker to put aside some or more money for their retirement.

Just as SSA's 800 number service would be improved with additional resources, the agency could upgrade its public education efforts with additional funding. A better-informed public would not only know more about the program itself but could help in forging a bipartisan consensus to strengthen Social Security for future generations.

I hope my response is helpful. If you need additional information, please feel free to contact me, or Evelyn Morton of the Federal Affairs staff at (202) 434-3760.

Sincerely,

Marie Smith  
*President-elect*

---

Consortium for Citizens with Disabilities  
Washington, DC 20006  
*June 24, 2002*

The Honorable E. Clay Shaw, Chairman  
Subcommittee on Social Security  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Shaw:

This is in response to your letter of May 28 requesting additional information regarding challenges facing the Commissioner of Social Security. Specifically, you asked:

**1. You raise a number of concerns about implementation of the Ticket to Work program in your testimony. Some to these have been addressed in recent legislation moving through the Committee. This Subcommittee will continue its close oversight of this important program and will want to work with you to identify improvements needed in the law. What cooperation have you received from SSA under the Commissioner's new leadership? Have you met with the new Commissioner? Have you shared your concerns? Has she been responsive?**

**2. In order for us to reach bipartisan agreement on how best to strengthen Social Security, the views of our constituents are so important. Their knowledge about the challenges Social Security faces and the options for change is extremely important to advance the debate. Based on your experiences with your members, where are the information gaps? How do you see SSA addressing those information gaps, and what recommendations would you have for ways SSA could better educate the public?**

The CCD Task Forces on Social Security and Work Incentives Implementation applaud your work in introducing H.R. 4070, the Social Security Program Protection Act of 2002 and addressing some of the Ticket to Work issues in the bill. We also appreciate your intention to have the Subcommittee continue its close oversight of this important program and the CCD Task Forces will want to work with you to identify improvements needed in the law. We met with Martin Gerry, Deputy Commissioner for Disability and Income Security Programs, in February. He and others in SSA have been available to hear our concerns and respond to inquiries about numerous issues. It is too soon to know whether the concerns that we have raised will find their way into decision- and policy-making in SSA. We also have a meeting scheduled with Commissioner Barnhart for mid-July.

Regarding Social Security reform, the general public sees the debate as a retirement program debate and most are unfamiliar with the other benefits paid by Social Security, including the disability and survivors' programs. SSA should engage in public information outreach activities to ensure that the general public, particularly those paying FICA taxes, have a clear understanding of all Social Security programs, and the basics of the insurance coverage they provide.

Much is understood about retirement benefits. However, few people seem to realize the scope of the additional coverage provided by the Social Security programs: survivors' coverage, including coverage of disabled adult children and disabled and elderly surviving spouses; dependents' coverage, including coverage of disabled adult children; and disabled workers' coverage, including coverage for their dependents. SSA could produce explanations of this coverage, along with examples, that could be disseminated through its available media resources. The personal earnings and benefits estimate statement (PEBES) made many people aware of the value of the benefits of Social Security system. Simple documents that primarily focus on the non-retirement benefits of the program could similarly go a long way in creating a broader understanding of the coverage provided.

In addition to basic information about the programs and their benefits, SSA should play a lead role in helping all stakeholders and policymakers to understand the implications of the various proposals for change. Unless there is a broader understanding of the programs and the potential changes, the debate will continue to create confusion. Acceptance of a final reform product will require that people understand what exists and what may be changing. Without such public understanding, there is great potential for public outcry over unexpected and unwanted results. Therefore, I believe that a sincere attempt to educate the general public must be combined with clear statements about the impact of various proposals on beneficiaries. These beneficiary impact statements should be based on agreed-upon use of consistent baseline and economic assumptions. While the stakes are so high for people with disabilities, few people understand the issues; therefore, it is incumbent upon policymakers to ensure that this information is widely available.

Thank you for this opportunity to provide comment on these issues. I would be happy to respond to any further questions.

Sincerely,

Marty Ford  
Co-Chair  
CCD Social Security Task Force

[Whereupon, at 11:10 a.m., the hearing was adjourned.]  
 [Submissions for the record follow:]

**Statement of LaJuana Alexander, Director of Counseling and Assessment,  
 Northwestern Technical College, Rock Spring, Georgia**

To the Subcommittee on Social Security:

It is my understanding that this is the committee to whom I should address my concerns.

Teachers and educational employees in 14 states who are covered by alternative state retirement plans (no SS withheld) are currently being adversely affected by a Social Security regulation which will penalize up to 60% of our SS benefits that were earned in other states or in other professions outside these education employee benefit plans. Organizations such as our Department of Technical and Adult Education actively recruit outstanding professionals in business and industry to teach in their areas of expertise. I doubt there are any who understand that they are going to pay a financial price for their cooperation. If they were, they would not be anxious to enter these educational fields.

I personally worked in various educational and non-profit foundation organizations for most of my adult life which had supposedly earned for me a small SS pension. After my husband left me, I realized I had to get busy and secure my old age benefits, so I went back to school for my master's and eventually entered the career counseling field at a technical college. I will be 10 year-vested next year which will also coincide with my 65th birthday. When I attended a retirement seminar, I was shocked to discover that I would not draw my full SS benefits (on which I was depending) because of my small 10 year pension at DTAE. It sounded as though my penalty would be about the same as those who had worked longer and had larger pensions. NO ONE TOLD US when we took these positions that this was going to happen.

It makes no sense to allow those 65 and older to draw their SS benefits and continue to work without penalty, while those of us who legitimately earned social security benefits in other professions are going to be penalized.

A recent article in the newspaper mentioned two bills—HR2638 and the Senate version SB1523—as fixes for this inequity. I would appreciate anything this committee can do to get those bills passed without delay. We may not be a great number of people, but this policy is hurting us just the same and many are going to suffer unnecessarily unless it is changed.

Thank you.

---

American Congress of Community Supports and Employment Services  
 Washington, DC 20006  
 February 14, 2002

House Committee on Ways and Means  
 The Honorable E. Clay Shaw, Jr., Chairman  
 Subcommittee on Social Security  
 B-316 Rayburn House Office Building  
 Washington, DC 20515-6353

House Committee on Ways and Means  
 The Honorable Wally Herger, Chairman  
 Subcommittee on Human Resources  
 B-317 Rayburn House Office Building  
 Washington, DC 20515-6351

Chairman Shaw and Chairman Herger:

Thank you for giving me the opportunity to submit my written statement on the challenges facing the Social Security Administration (SSA) and new Commissioner. As chairmen of your respective subcommittees, I am sure that you can appreciate that the lives of individuals with disabilities are greatly impacted by the programs administered by SSA.

I am submitting my statement on behalf of the *American Congress of Community Support and Employment Services (ACCSES)*. ACCSES is a national, nonprofit organization of providers of vocational rehabilitation and community supports committed to maximizing employment opportunities and independent living for individuals with mental and/or physical disabilities.

I will focus my statement on the ongoing implementation of the Ticket to Work and Self-Sufficiency Program (hereafter referred to as the Ticket program), which

is part of the historic Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999. Considering that many individuals with disabilities want to work, but do not for fear of losing their Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI), the Ticket program presents a clear opportunity for success. The success of the Ticket program will undoubtedly be measured in many ways, such as the number of beneficiaries discontinuing their Federal disability benefits, community rehabilitation programs (CRPs) providing quality services, and the potential savings to the Social Security Trust Fund.

The Ticket program embodies the desire that individuals with disabilities have in wanting to forego disability benefits and become self-sufficient. Since currently less than one half of one percent of SSDI beneficiaries and approximately one percent of SSI beneficiaries ever realize the dream of becoming self-sufficient, it is crucial that the legislative intent of the TWWIIA is maintained during the implementation process. Removing disincentives to work and barriers to access quality health care are the cornerstones of this landmark piece of legislation. Anything short of SSA achieving these goals will result in lost confidence in the system by both beneficiaries and community providers alike.

Despite congressional intent, in publishing its final regulations on the Ticket program SSA has created new and distinct barriers to employment for SSDI and SSI beneficiaries. *ACCSES* feels that the exclusion of beneficiaries who have impairments that are expected to improve and for whom SAA has not yet conducted at least one continuing disability review (CDR) is troublesome. The “medical improvement expected” (MIE) designation is ambiguous. Reliable evaluations are hard to obtain and subject to interpretation by disability determination officials. SSA’s decision is clearly based more on administrative convenience than sound public policy since many beneficiaries remain on the rolls well after their first CDR. All beneficiaries deserve an equal opportunity to participate in the Ticket program and access the services being offered by community providers that will enable them to gain self-supporting employment.

In fact, SSA acknowledges the weakness of its standard in its own response to comments under Section 411.125. In its response, SSA stated, “. . . we plan to conduct an evaluation of the methodology for the classification system to assess possible ways to improve the system for use in identifying those beneficiaries for whom near-term medical improvement should preclude the immediate receipt of a Ticket.”

In maintaining the MIE exclusion in the final regulations, SSA stated that using “the medical improvement diary system is the most practical and efficient means available to identify those beneficiaries with impairments that are expected to improve within a relatively short period of time so as to permit the individual to engage in SGA <Substantial Gainful Activity>.” The diary system, however, will not assist beneficiaries who have been improperly classified as MIE but continue to need ongoing rehabilitative support services (i.e. there were 2200 individuals with diagnosed schizophrenia in 1994—a medical condition that often involves relapses). Clearly these individuals need more than a diary to benefit from the resources available under the Ticket program. Instead of being fearful that some beneficiaries with near-term medical improvements might use such resources to obtain employment and engage in SGA, SSA should focus their attention on granting beneficiaries maximum access to them.

Changing the final regulations to reflect the intent of the legislation is also consistent with the purpose of the Rehabilitation Act of 1973, as amended. Both the Ticket-to-Work program and the Rehabilitation Act of 1973, as amended, aim to offer the needed resources and opportunities for individuals with disabilities who want to enter or reenter the workforce. More importantly though, both stress the importance of informed consumer choice and self-determination in accessing rehabilitative and support services. By denying beneficiaries designated as MIE, SSA is essentially denying beneficiaries from exercising their right to choose the best and most appropriate options available in ending their dependency on cash benefits.

Along the same lines as the MIE exclusion, SSA has created an additional disincentive with its timely progress standards toward self-supporting employment. Though *ACCSES* recognizes that these standards only apply to CDR protection (and not participation in the Ticket program), beneficiaries will be wary of participating if they fear a negative CDR determination will end their cash benefits prior to obtaining self-supporting employment. Basically, there is no incentive for beneficiaries to participate in the Ticket program without an unambiguous CDR protection.

The standards in the final regulations are clearly too rigid and do not take into consideration the different abilities of beneficiaries who have different disabilities. In other words, a “one-size-fits-all” approach to the timely progress standards assumes that beneficiaries with physical and mental disabilities require the same rehabilitative services and supports. This approach may be easier to administer and

monitor, but it will make it harder for beneficiaries with severe, persistent, and complex disabilities to enter or re-enter the workforce. Individuals with psychiatric, developmental, physical, and/or multiple disabilities require different services and supports and, therefore increased flexibility not only recognizes individual differences, but also accommodates them, thus assuring an increased opportunity for success.

The timely progress standards should be directly related to how beneficiaries are accomplishing their employment goals as outlined in their approved Individual Work Plans (IWPs). Connecting the timely progress standards to the IWPs puts the beneficiaries in control of their own progress—thus, ensuring a greater probability of success. This approach, if adopted by SSA, would, again, be consistent with the emphasis placed on informed consumer choice and self-determination by the Ticket program and the Rehabilitation Act of 1973, as amended. As long as beneficiaries are actively engaged in working toward their employment goal, and the community providers are furnishing services (employment, vocational rehabilitation, or other support services as outlined in Subpart E in the final regulation) then their level of success should not be adversely measured using “administrative” standards.

It appears that SSA has sided, again, with administrative convenience in establishing its standards for CDR protection instead of the congressional intent to remove barriers and disincentives. In responding to comment, SSA stated, “. . . if we allowed the individual and the EN or State VR agency to define timely progress, it would not be possible to develop a consistent and standardized method to determine timely progress for program administration and integrity purposes.” Considering that the IWP is basically the contract between beneficiaries and community providers—with clearly required and defined components already approved by SSA Program Managers—SSA has the documentation needed to maintain the program administration and integrity it references.

The final regulations already show a willingness by SSA to recognize unforeseen events, which may cause beneficiaries to suspend their work efforts. By granting an unassigned or inactive ticket status during the initial 24-month period, SSA is allowing beneficiaries to temporarily suspend their employment plan. Also, the months in which their tickets are inactive do not count toward the time limitations for making timely progress toward self-supporting employment. Clearly, if beneficiaries are working toward achieving their employment goals outlined in their IWPs, then it stands to reason that they are meeting the timely progress standards. SSA should not penalize beneficiaries with inflexible standards.

SSA has also modified its standards in the final regulations to allow for “banking” of work during the initial 24-month period to meet work requirements of the first 12-month progress review period if the work was at the requisite level. If SSA is willing to accommodate beneficiaries and their unique needs by allowing the banking of work, then SSA should also be willing to modify their standards to maximize beneficiaries’ self-determination.

Finally, the success of putting beneficiaries back to work will, in large part, depend on the availability of employment services, vocational rehabilitative services, and other support services in the community. Most community providers fully recognize that the program does not come without risks and therefore will be looking for incentives to make their participation justifiable as an Employment Network (EN). *ACCSES* is concerned that by only allowing community providers to change their desired payment system every 18 months, the final regulations will hinder the recruitment of ENs. Community providers will be looking for flexibility to help ease their apprehension over the risks associated with their participation.

Granted, community providers are not obligated to accept tickets that they feel are beyond their service expertise. However, since the Ticket program is outcome-based in nature, community providers will have to wait an extended period of time before seeing a return on their investment (i.e. furnishing services to beneficiaries). And though community providers can elect to choose the milestone-outcome payment system—which begins making payments sooner once milestones are achieved—the total net worth of the payments is less than the outcome payment system. By making what amounts to a simple infrastructure change, SSA will go a long way in appeasing provider apprehension.

In addition, many potential community providers are not-for-profit organizations that lack the resources to deliver services without some cost reimbursement prior to job placement. Few of these organizations can afford to wait for a year or longer before recovering at least some of their costs. The current payment system will prevent the majority of community providers from participating in the program and will result in a lack of choice for beneficiaries and in a service delivery system with insufficient capacity. Furthermore, by shifting all of the risk to community pro-

viders, it is reasonable to expect that beneficiaries with higher abilities will be targeted for services with the most in need viewed as to great a risk.

On a related issue, SSA decided not to narrow the gap in net payment amounts between the outcome and milestone-outcome payment systems. Currently, under the milestone-outcome payment system in the final regulations, SSA will only pay 85 percent of the total payments under the outcome payment system. The concept is in keeping with congressional intent and the statutory language, but the size of the gap is questionable.

The milestone-outcome payment system was added to the statute because community providers expressed their reluctance to participate in the Ticket program with the proposed outcome-only based payment system. The addition of the milestone-outcome payments aimed to entice community providers to enroll as ENs and offer service to beneficiaries. By only paying 85 percent, SSA essentially created a roadblock for community providers who are considering accepting the risk associated with the program. Though community providers will receive some up-front monies, the total amount not materialized (15 percent) is a high price to pay.

Considering that to date SSA has had difficulties in recruiting community providers to enroll as ENs, the concerns expressed over the payment systems should be taken under advisement.

In closing, *ACCSES* appreciates the opportunity to submit its written statement to the House Ways and Means Subcommittees on Social Security and Human Resources. *ACCSES* urges the new Commissioner of SSA to incorporate these important changes as the ongoing implementation of the Ticket program moves forward. Thank you in advance for your consideration and attention to this issue. Should you desire additional information, please feel free to contact me at 231-922-4886, or Brandon Macsata in our Washington, DC office at 202-466-3355. I am

Sincerely,

Steve H. Perdue  
*President*

---

**Statement of Ronald G. Bernoski, President, Association of Administrative Law Judges, Bronx, New York**

Mr. Chairman and Members of the Subcommittees:

**I. INTRODUCTION**

Thank you for the opportunity to testify before you today. My name is Ronald G. Bernoski. I am an Administrative Law Judge (“ALJ”) who has been hearing Social Security disability cases at the Office of Hearings and Appeals (“OHA”) of the Social Security Administration (“SSA”) in Milwaukee, Wisconsin, for over 20 years.

This statement is presented in my capacity as the President of the Association of Administrative Law Judges (“AALJ”), which represents the ALJs employed in the SSA OHA and the Department of Health and Human Services (“DHHS”). One of the stated purposes of the AALJ is to promote and preserve full due process hearings in compliance with the Administrative Procedure Act for those individuals who seek adjudication of program entitlement disputes within the SSA.

I will address the challenges facing the new Commissioner of SSA in improving the disability determination appellate process at the ALJ hearing and Appeals Council administrative review levels. First, I will list the challenges at each of the appellate levels and then I will offer short and long term solutions that may be implemented to resolve these challenges. This discussion presumes familiarity with the structure of the SSA OHA and the initiatives by the SSA management to change or improve the functioning of OHA, including the Process Unification Training (“PUT”), the Hearing Process Improvement Plan (“HPI”), and the Appeals Council Improvement Plan (“ACPI”).

**II. CHALLENGES FOR THE NEW SSA COMMISSIONER**

**A. Challenges at the ALJ Hearing Level:** In brief, the Commissioner’s challenges at this level is to have a large and growing volume of cases heard and decided by SSA’s ALJs in a timely and high quality manner that preserves the claimant’s due process rights under the Social Security Act and Administrative Procedure Act (“APA”). Several specific challenges that now confront the new Commissioner are as follows:

**1. The Need to Reduce the Number of Cases that Require an ALJ Hearing and Thus Get the Claimants a Correct Final Administrative Result Sooner:** The burgeoning caseload at the ALJ hearing level has been growing unabated in recent years. Prior to HPI, the SSA OHA heard and decided over 500,000 cases an-

nually, and surpassed 600,000 in one recent year. SSA is projecting that the annual case load will climb to about 726,000 by 2005. This has strained the current structure of OHA to timely handle the volume with quality because nothing effective has been done to either reduce the number of cases that require an ALJ hearing or change the structure of OHA to better address the huge caseload:

(a) OHA's structure and process for hearing cases has not changed significantly to adjust to the large scale of the operation since the APA went into effect in 1947. There is no mechanism for settling cases without a hearing, other than granting a claim on the record, because SSA has no representative to assert its interests at the hearing level. Cases endlessly are remanded back to the ALJ level for rehearing because the record remains open without limits, new issues may be raised at all levels of appeal, and the quality of the Appeals Council review is poor.

(b) The reversal rate of the DDS decisionmakers' determinations by the ALJs remains high. In order to reduce the number of ALJ reversals of DDS determinations, in 1996, the SSA conducted the PUT training to have the DDS decisionmakers use the same rules to decide cases as the ALJs. This did not result in fewer cases requiring a hearing.

There are several steps that SSA can take that do not require legislation to reduce the number of ALJ hearings.

**2. Challenges from the ALJ Level HPI Reorganization of OHA:** There is a consensus that HPI, which SSA implemented in 2000, has both exacerbated the case disposition time problems that it was intended to solve and created new problems that have caused work flow bottlenecks, reduced the quality of decision drafts by some decision writers, and increased the case backlog. The several HPI challenges are as follows:

(a) One purpose of HPI was to reduce the amount of processing time it takes to obtain the evidence for the record by doing it more completely before the ALJ hearing, so that fewer cases would need post-hearing development. The practice of HPI did not result in a reduction of cases that require post-hearing development.

(b) HPI also was expected to reduce overall case processing time, ostensibly by reducing the need for post-hearing development. Instead, case processing time steadily has lengthened under HPI beyond what was considered to be unacceptable at the time that HPI was implemented. The creation of teams to handle cases was intended to decrease the number of people who have to work on each case and increase individual responsibility for the quality of work within the group, which were expected to reduce case processing time and increase work quality. Instead, HPI process has resulted in an increase of the "hand offs" of the files and the sense of individual responsibility for work quality has vanished. The cases are assigned to judges later in the process and the responsibility for early pre-hearing case development has been transferred to the staff.

(c) The quality of decision drafts has declined because, as part of the HPI plan, SSA has promoted to Paralegal Specialist positions as ALJ decision writers clerical staff members, many who do not have the skills to perform the job adequately. HPI created promotion opportunities for the clerical staff, which boosted the morale of those receiving the promotions. However, the implementation of HPI resulted in the promotion of clerical staff to approximately 350 writer positions without the need to show that they have the skills to do the job. This promotion process resulted in positions being filled by clerical staff, some of whom have not been successful in performing the job.

(d) A huge backlog of case files that need to be prepared for hearing has accumulated as a result of the SSA promoting about 350 clerks to writer positions and about 300 clerks to case technician positions as part of the HPI plan without replacing the vacated clerical positions. (The process of organizing and marking exhibits to prepare a case for hearing is called "pulling," which is a clerical task.) As a result, the backlog of unpulled cases has ballooned from about 34,000 to 216,000 since HPI has been implemented. The shortfall in "pulled" cases has resulted in an insufficient number of cases being scheduled for ALJs to hear in many offices and adds to the case processing time.

(e) The lack of acceptance of the failure of HPI by the SSA administrators is a challenge that the new Commissioner confronts. At a hearing before the House Subcommittee on Social Security in June 2001, Mr. Stanford Ross, Chair of the SSAB, testified that the HPI did not improve the hearing process and in some circumstances it had made the situation worse. Without acknowledg-

ment of the failure of HPI, new strategies will not be considered seriously and implemented by SSA administrators.

### 3. The Challenge of Preserving Due Process While Achieving Greater Efficiency:

I have a strong concern with recent information that I have seen relating to proposals to transfer the SSA administrative law judge hearing to the DDS, non-ALJ hearing officers within OHA, and/or non-ALJ personnel within the District Offices. Any plan to deny Social Security claimants the right to a full due process hearing under the Administrative Procedure Act (“APA”) before an administrative law judge will result in a denial of basic constitutional rights to the American people. The preservation of APA due process for the claimants, including the hearing and decision of their claims by ALJs who are appointed pursuant to the APA, is essential as the new Commissioner devises ways to more efficiently address the agency’s large and growing caseload.

The APA was adopted by Congress in 1946 to ensure that the American people were provided hearings that are not prejudiced by undue agency influence. The securing of fair and competent hearing adjudicators was viewed as the heart of the Administrative Procedure Act.

The APA was enacted primarily to achieve reasonable uniformity and fairness of the administrative process in the Federal Government for members of the American public with claims pending before Federal agencies. The APA sets forth a due process administrative procedure for the hearing and decision by administrative law judges of cases brought before the Federal agencies to which the APA applies. The APA provides the minimum standards for federal administrative due process in the Executive Branch, and delineates procedures for adjudicative administrative proceedings, namely individual case decisions about rights or liabilities as an agency’s judicial function. This includes uniform standards for the conduct of adjudicatory proceedings, including the merit appointment of administrative law judges. U.S. Justice Dept., *Attorney General’s Manual on the Administrative Procedure Act* 9 (1947) (the “Manual”). The APA, Pub. L. No. 79–404, 60 Stat. 237 (1946), as amended, is codified at 5 U.S.C. §§551–559, 701–706, 1305, 3105, 3344, 4301(2)(E), 5335(a)(B), 5372, and 7521.

By APA mandate, the administrative law judge is an independent, impartial adjudicator in the administrative process and there is a separation of the adjudicative and prosecutorial functions of an agency. The administrative law judge is the only impartial, independent adjudicator available to the claimant in the administrative process, and the only person who stands between the claimant and the whim of agency bias and policy. If SSA returns to using subordinated employees who would be an instrument and mouthpiece for the SSA, we will have returned to the days when the agency was both prosecutor and judge.

There is a close relationship between the APA and the Social Security Act. In the case of *Richardson v. Perales*, 420 U.S. 389 (1971), the U.S. Supreme Court stated that the APA was modeled upon the Social Security Act.

It is clear that Congress intended the APA to apply to hearings conducted under the Social Security Act. The Attorney General’s Manual on the Administrative Procedure Act, which is recognized by the U.S. Supreme Court to be part of the legislative history of the APA, states that “the residual definition of ‘adjudication’ in section 2(d) was intended to include . . . [t]he determination of . . . claims under Title II (Old Age and Survivor’s Insurance) of the Social Security Act. . . .” Manual at 14–15 (emphasis added), *citing*, Senate Judiciary Committee Hearings on the APA (1941) at 657, 1298, 1451 and S. Rep. No. 752 at 39; 92 Cong. Rec. 5648. (The other programs did not then exist.)

In the case of *Butz v. Economou*, 438 U.S. 478, 513–514 (1978), the U.S. Supreme Court defined the role of a Federal Administrative Law Judge as follows:

There can be little doubt that the role of the modern hearing examiner or administrative law judge within this framework is “functionally comparable” to that of a judge. His powers are often, if not generally, comparable to those of a trial judge. He may issue subpoenas, rule on proffers of evidence, regulate the course of the hearing, and make or recommend decisions . . . . More importantly, the process of agency adjudications is currently structured so as to assure that the hearing examiner exercises his independent judgment on the evidence before him, free from pressures by the parties or other officials within the agency. Prior to the Administrative Procedure Act, there was considerable concern that persons hearing administrative cases at the trial level could not exercise independent judgment because they were required to perform prosecutorial and investigative functions as well as their judicial work . . . and because they

were often subordinate to executive officials within the agency . . . . Since the securing of fair and competent hearing personnel was viewed as “the heart of formal administrative adjudication,” . . . the Administrative Procedure Act contains a number of provisions designed to guarantee the independence of hearing examiners. They may not perform duties inconsistent with their duties as hearing examiners . . . . When conducting a hearing under the APA, a hearing examiner is not responsible to or subject to the supervision or direction of employees or agents engaged in the performance of investigative or prosecution functions for the agency . . . . Nor may a hearing examiner consult any person or party, including other agency officials, concerning a fact at issue in the hearing, unless on notice and opportunity for all parties to participate . . . . Hearing examiners must be assigned to cases in rotation so far as practicable . . . . They may be removed only for good cause established and determined by the Civil Service Commission after a hearing on the record . . . . Their pay is also controlled by the Civil Service Commission.

The Congress has reviewed the function of the administrative law judge in the Social Security Administration. In 1983, a Senate Subcommittee on Oversight of Government Management of the Committee on Governmental Affairs conducted a hearing that inquired into the role of the administrative law judge in the Title II Social Security Disability Insurance Program. S. PRT. 98-111. The Committee issued its findings on September 16, 1983, which provided in part as follows:

The APA mandates that the ALJ be an independent impartial adjudicator in the administrative process and in so doing separates the adjudicative and prosecutorial functions of an agency. The ALJ is the only impartial, independent adjudicator available to the claimant in the administrative process, and the only person who stands between the claimant and the whim of agency bias and policy. If the ALJ is subordinated to the role of a mere employee, and instrument and mouthpiece for the SSA, then we will have returned to the days when the agency was both prosecutor and judge.

The decisionmaking independence provided by the APA is not for the benefit of the judge, but instead is provided for the protection of the American people. The protections are intended to ensure that the American people receive a full and fair due process hearing with a decision based on the evidence in the hearing record. This is a right protected by the Constitution. “The APA creates a comprehensive bulwark to protect ALJs from agency interference. The independence granted to ALJs is designed to maintain public confidence in the essential fairness of the process through which Social Security benefits are allocated by ensuring impartial decisionmaking.” *Nash v. Califano*, 613 F.2d 10, 20 (2nd Cir. 1980). Despite these protections, the Social Security Administration has a history of attempting to assert undue influence on the decisionmaking of its administrative law judges. This abuse occurred in the 1980’s after the agency had implemented the *Bellmon Review Program*. The Senate Subcommittee on Oversight of Government Management (referred to above) issued findings on September 16, 1983, on this improper agency conduct that provided in part as follows:

The principal findings of the subcommittee is that the SSA is pressuring its ALJs to reduce the rate at which they allow disabled persons to participate in or continue to participate in the Social Security Disability Program.

The *Bellmon Review Program* also was challenged in the courts in *Association of Administrative Law Judges v. Heckler*, 594 F.Supp. 1132 (1984). In that case, a Federal district court judge found in part as follows:

In sum, the Court concludes, that defendant’s unremitting focus on allowance rates in the individual ALJ portion of the *Bellmon Review Program* created an untenable atmosphere of tension and unfairness which violated the spirit of the APA, if no specific provision thereof. Defendants’ insensitivity to that degree of decisional independence the APA affords to administrative law judges and the injudicious use of phrases such as “targeting”, goals and “behavior modification” could have tended to corrupt the ability of administrative law judges to exercise that independence in the vital cases that they decide.

The efforts of the administrative law judges of the Social Security Administration to protect the Social Security hearing process and the rights of Social Security claimants was recognized in an award presented to the judges of the agency by the President of the American Bar Association in August 1986. The award acknowledged the efforts of the Social Security administrative law judges in protecting the integrity of the hearing system. The award specifically stated:

That the American Bar Association hereby commends the Social Security Administrative Law Judge Corps for its outstanding efforts during the period from 1982–1984 to protect the integrity of administrative adjudication within their agency, to preserve the public confidence in the fairness of governmental institutions and uphold the rule of law.

On January 9, 2001 Commissioner Kenneth S. Apfel affirmed the relationship between the Administrative Procedure Act and the Social Security Act for Social Security hearings. He stated as follows:

The Social Security Administration (SSA) has a long tradition, since the beginning of the Social Security programs during the 1930s, of providing the full measure of due process for people who apply for or who receive Social Security benefits. An individual who is dissatisfied with the determination that SSA has made with respect to his or her claim for benefits has a right to request a hearing before an Administrative Law Judge, an independent decisionmaker who makes a *de novo* decision with respect to the individual's claim for benefits. As the Supreme Court has recognized, SSA's procedures for handling claims in which a hearing has been requested served as a model for the Administrative Procedure Act (APA). Congress passed the APA in 1946 in part to establish uniform standards for certain adjudicatory proceedings in Federal agencies, in order to ensure that individuals receive a fair hearing on their claims before an independent decisionmaker. SSA always has supported the APA and is proud that the SSA hearing process has become the model under which all Federal agencies that hold hearings subject to the APA operate. SSA's hearing process provides the protections set forth in the APA, and SSA's Administrative Law Judges are appointed in compliance with the provisions of the APA.

In a recent study prepared for the Social Security Advisory Board by Professors Paul Verkuil and Jeffrey Lubbers, entitled *Alternative Approaches to Judicial Review of Social Security Disability Cases*, the authors recommended the establishment of an Article I court for Social Security cases. The report favorably refers to the over 1000 administrative law judges in the Social Security Administration as an objective source of decisionmaking that can be effectively integrated into an article I court review structure. This recommendation seeks to improve and strengthen the Social Security disability process, not to diminish the system as would result from abandoning the administrative law judge hearing. In fact, articles recently have been published that recommend that the Veterans disability appeals system be improved by modeling it after the Social Security administrative law judge hearing process. James T. O'Reilly, *Burying Caesar: Replacement of the Veterans Appeals Process Is Needed to Provide Fairness to Claimants*, 53 Admin. L. R. 223 (2001); William F. Fox, Jr., *A Proposal to Reform the VA Claims Adjudication Bureaucracy: One Law Professor's View*, FBA Veterans Law Sec., Tommy: A Lawyer's Guide to Veterans Affairs, 1 (Issue 3, 2001).

Any retreat from this long and proud tradition of the Social Security Administration with regard to the manner in which it conducts hearings will have a substantial adverse effect on Social Security claimants and will deny them basic constitutional rights. American citizens will have less rights than they had prior to the enactment of the APA.

We urge Congress to protect the constitutional rights of the American people and to continue to provide the Social Security claimants the full range of due process rights for a Social Security hearing under both the APA and the Social Security Act.

**B. Challenges at the Appeals Council Level:** Several specific challenges that now confront the new Commissioner are as follows:

1. **Long Case Processing Time:** The long case processing time at the Appeals Council often is measured in years, rather than months.

2. **Poor Decision Quality:** The chronically poor quality of the Appeals Council decisions has declined further in recent years. The decisions rarely have legal citations of authority or rationales for the positions taken, and often are factually inaccurate regarding what the record shows. The informality of the decisions does not give the impression of the careful deliberation to which the claimants are entitled.

3. **Excessive Number of Lost Hearing Record Tapes and Files:** The chronic loss of hearing record tapes and files by the Appeals Council requires a lengthy rehearing process for the claimants. Anecdotal evidence suggests that thousands of hearing tapes and files have been lost. This reportedly is caused by three problems: (a) the repeated crashing of the Appeals Council's antiquated computer case tracking system and loss of case names from the database that

are not recoverable, (b) a large backlog of cases that have not been entered into the case tracking system, and (c) separating hearing tapes from the hearing file to save storage space

**4. Achieving Acceptance of the Failure of the Appeals Council Level ACPI Reorganization of OHA:** Acceptance by SSA administrators of the failure of the ACPI that was implemented in 2000 to correct these three chronic challenges of the Appeals Council operation also is a challenge that the new Commissioner confronts. Without acceptance of the failure of ACPI, new strategies will not be considered seriously and implemented by SSA administrators.

### III. PROPOSED ACTIONS TO MEET THE CHALLENGES FOR THE NEW SSA COMMISSIONER

#### A. Overview of Needed Reforms for the SSA Hearing Process

**1. Reorganize the Hearing Office Process:** Because of the failure of HPI, SSA should reorganize the hearing office process. The reorganization should correct the defects in HPI. We propose that the recommendations of the Commissioner's HPI Steering Committee be used as a guide for the reorganization. The reorganization should consist of both short term and long term changes. The short term changes should be structured in a manner that permits easy transition to the long term reforms. The objective should be to immediately return to the efficiency and level of case production that existed in the hearing offices immediately before the introduction of HPI (over 500,000 cases a year). The long term reform should then build on that base. There is no single change that will accomplish this objective. It instead must be accomplished by a series of coordinated changes in several different areas. The changes will allow the agency to improve the service provided to the American public.

We recommend that the short term changes should include the following elements:

- (a) The process must be simple, and administrative law judges should be assigned to cases from master docket according to law.
- (b) Each administrative law judge should have adequate and properly trained support staff. The support staff should include a clerical worker, paralegal and attorney/writer.
- (c) The support staff should be assigned to perform the work product of a particular administrative law judge according to the instructions and guidance of the judge.
- (d) The administrative law judge should have control of all case development.
- (e) The administrative law judge should have the responsibility to determine when a case decision is legally sufficient and the judge should have the authority to return the decision for rewrite to achieve the same.
- (f) Case files of each administrative law judge should be maintained separately.
- (g) The assigned support staff of each administrative law judge should be under the supervision of the hearing office management staff for personnel actions.
- (h) Staff members should be accountable for their work product. Case work should be assigned on an individual basis to support staff to provide for accountability and enhance the employees' sense of ownership.

We recommend that the long term changes should include the following elements:

- (a) Close the hearing record after the administrative law judge hearing.
- (b) Assignment of Social Security Administration representatives to represent the agency at administrative hearings. Such representatives would be responsible to defend the position of the agency at the hearing, recommend favorable cases, exercise settlement authority, and assist unrepresented claimants.
- (c) Create a case manager and law clerk position for the support staff of each administrative law judge (as recommended by the Commissioner's HPI Steering Committee).
- (d) Allow administrative law judges to issue bench decisions and short form decisions.
- (e) Adopt regulations for issue exhaustion as suggested by the United States Supreme Court in the case of *Sims v. Apfel*, 530 U.S. 103 (2000).
- (f) Reform the Appeals Council to issue decisions in some cases, limit the scope of appeal for claimants who have received the requested relief from the

administrative law judge and support the administrative law judge in “no-show” dismissals.

(g) Implement a sustainable agency policy on the issue of pain and the treating physician rule and defend the same if challenged.

(h) Require the DDS to follow disability law and regulations.

(i) Improve the use of technology in the hearing process (i.e. voice to print software, improved equipment for recording hearings, etc.).

(j) Adopt rules of procedure for the hearing process.

(k) Reorganize the Office of Hearings and Appeals.

**B. Strategies to Reduce the Number of Cases Heard at the ALJ Hearing Level That May Be Effected in the Short Term by Regulation Changes and Preserve Due Process**

**1. Require DDS Decisionmakers to follow the Law and Regulations:** SSA should issue regulations that require DDS decisionmakers to adjudicate cases pursuant to the law and regulations. This can be implemented on a short term basis that would immediately serve to reduce the number of cases appealed to the ALJs.

**2. Close Record After Administrative Law Judge Hearing:** The amendment of SSA’s regulations to close the record at the end of the ALJ hearing would reduce the number of cases that ALJs must hear upon remand from the Appeals Council and courts based upon new evidence. New evidence is one of the most common reasons for remand of cases. This adds to the ALJ case load and greatly delays a final administrative decision for the claimants. This change will place the responsibility upon the claimants’ representatives for producing all relevant and material evidence at the hearing.

By SSA regulation, the hearing record in the Social Security disability system is not closed at any stage in the appeals process. This system precludes administrative finality and allows the claimant to introduce new evidence at each step of the process, including the Appeals Council level. 20 C.F.R. §§ 404.900(b), 404.976(b). This is true even when the evidence was in existence and available during the prior stage of the appeal. The reason the SSA keeps the record open at the administrative levels is that the Social Security Act authorizes the courts to remand a case to SSA when a claimant shows that there is material new evidence and there is good cause for not including it in the record earlier. 42 U.S.C. § 405(g).

In a recent report, the Social Security Advisory Board (“SSAB”) stated that “Congress and SSA should review again the issue of whether the record should be fully closed after the ALJ decision.” *Charting the Future of Social Security’s Disability Programs: The Need for Fundamental Change, January 2001*, p. 20. This change will bring administrative finality to the Social Security disability case and will encourage all known relevant and material evidence to be produced at the hearing.

New documentary medical evidence of disability based upon treatment that occurred before the date on which the ALJ hearing closed should be admitted into evidence by the Appeals Council only upon a showing that the new evidence is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding. This standard is in keeping with the standard that the Social Security Act allows for the courts. Unrepresented claimants should be exempted from the requirement to show good cause.

**3. The SSA Should Have a Representative At the ALJ Hearings:** After conducting a pilot program to work out the details in practice, the SSA should amend its regulations to provide for a government representative at the ALJ hearing. This change would permit SSA to complete the documentary record faster, enter into settlements without the need for a hearing in some cases, and present the government’s position on each case. SSA representation will allow the SSA to present its evidence, present the type of expert witnesses it deems necessary, and advance its legal theories in the case. The government representative also should provide assistance and advice to claimants in unrepresented cases.

In order to meet the requirements of due process, the APA provides that “[a] party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding.” 5 U.S.C. § 555(b). Therefore, the SSA, as a party, has the right to appear on its own behalf at the proceedings before the OHA. However, the Social Security Administration is not represented at the disability hearing before an administrative law judge. SSA regulations long have stated that it “conducts the administrative review process in an informal, nonadversary manner,” 20 C.F.R. § 404.900(b), so SSA thus has waived its right to appear at the ALJ hearings. The present system worked well when most claimants in Social Security cases were not represented at the hearing. However, there has been a dramatic rise in the number of claimants who are represented at the hearing. Presently, well

over 80% of the claimants are represented at the hearing. The Social Security Advisory Board has noted that “[t]he percentage . . . of claimants represented by attorneys at ALJ hearings has nearly doubled [between] 1997 [and 2000].” SSAB, *Disability Decision Making: Data and Materials*, Chart 56—Attorney and Non-attorney Representatives at ALJ Hearings Fiscal Years 1997–2000, p. 73 (January 2001).

In its recent report, the SSAB recommended that the SSA have representation at the Social Security disability hearing: “We think that having an individual present at the hearing to defend the agency’s position would help to clarify the issues and introduce greater consistency and accountability into the adjudicative system.” *Charting the Future of Social Security’s Disability Programs: The need for Fundamental Change*, January 2001, p. 19.

The SSA had a pilot program for its representation at the hearing in 1982. This pilot program was discontinued after an unfavorable court decision on the project. *Salling v. Bowen*, 641 F. Supp. 1046 (W.D.Va. 1986). The past pilot program on the government representative project was not an adequate test of this system. The SSA should implement a new test program for agency representation at the hearing. This pilot project should be implemented in coordination with the claimants’ bar, SSA employee organizations, our Association, and other interested groups. The pilot program should address the issues raised by the court in *Salling*. The objective is to establish a hearing process that provides a full and fair hearing for all parties who have an interest in the case.

In addition, in the current non-adversarial setting, the SSA ALJ has the legal responsibility to “wear three hats” in each case. The ALJ legally is bound to ensure that all of the claimant’s relevant and material evidence is made part of the record and the claimant’s interests are protected, to protect the interests of the government in the hearing, and to make a fair decision which is based on the evidence in the record. Additionally, the judge must take care to not become overly protective of the interests of the government for fear that the case will be reversed on appeal on a claim of bias against the claimant. The inherent conflict in all of these roles is patent and would be resolved by having the government represented at the hearing.

**4. If the SSA Provides for a Government Representative at the Hearing, Require Issue Exhaustion at the Appeals Council Level for Represented Claimants:** As the Supreme Court stated in *Sims v. Apfel*, 530 U.S. 103, 120 S.Ct. 2080, 147 L. Ed. 2d 80 (2000), there is no statute or regulation that requires that a claimant must list the specific issues to be considered on appeal on the request for review by the Appeals Council of an ALJ’s decision, in order to preserve those issues for judicial review. Although agencies often issue “regulations to require issue exhaustion in administrative appeals,” which are enforced by the courts by not considering unexhausted issues, “. . . SSA regulations do not require issue exhaustion.” *Id.* at 2084. The Supreme Court refused to impose a judicially inferred issue exhaustion requirement in order to preserve judicial review of the issues upon a claimant for Title II and Title XVI Social Security Act benefits because the issues in SSA hearings are not developed in an adversarial administrative proceeding and the “[Appeals] Council, not the claimant, has primary responsibility for identifying and developing the issues.” *Id.* at 2086. However, the Court, deferring to the agency, noted that “. . . we think it likely that the Commissioner could adopt a regulation that did require issue exhaustion.” *Id.* at 2084. The Supreme Court thus explicitly invited SSA to draft new regulations.

Unrepresented claimants should be excepted from the requirement to show good cause. Expecting unrepresented claimants to bear the burden of preserving specific legal issues for judicial review does not comport with a sense of fair play and keeping the claims process claimant-friendly.

Issue exhaustion would bring finality to the administrative process and it is consistent with the general principles of administrative law and the procedure of other agencies in the Federal Government.

### **C. Strategies to Reduce Case Processing Time and Increase Quality of Service at OHA While Preserving Due Process**

**1. Administratively Reform the HPI Process:** SSA should change the HPI process by assigning cases to ALJs at an earlier point in the process, such as when the cases are entered into the computerized master docket. This would return the control of pre-hearing case development to the ALJs, leave the ALJ in control of the hearing, and support the ALJ’s responsibility for determining when a draft decision is legally sufficient. SSA also should return individual accountability for work product to the employees by assigning staff employees to work with each ALJ, which should consist of a clerical person, paralegal, and staff attorney. This will enhance morale through a sense of ownership by employees working on particular cases for an individual judge. These changes are needed to permit the ALJs to provide full

and fair hearings for the American public in an efficient and timely manner. SSA may effect these changes administratively on a short term basis.

**2. Redefine Paralegal Specialist Job To Include Clerical Duties:** SSA OHA may redefine the GS-0950 Paralegal Specialist ALJ decision writer job across a broad band of General Schedule levels to permit the assignment of appropriate clerical duties to the people promoted to this position who have not performed the ALJ decision writing function well. The clerical work could include the case pulling and other clerical work that has been accumulating. This permits the necessary clerical work of the agency to get done while permitting the promoted staff to stay at their new grade levels and experience satisfaction from a job well done.

**3. Enhance the Appeals Council Case Tracking System:** SSA should install a modern computerized case tracking system to prevent loss of files by the Appeals Council.

**4. Reorganize the Office of Hearings and Appeals**

**(a) Proposed Legislation to Reform the Office of the Chief Judge:**

*Current Status:*

The adjudication of administrative claims by the SSA is currently done by administrative law judges who are part of the Office of Hearings and Appeals. The function for both administrative law judge hearings and the appellate process for the review of administrative law judge decisions by the Appeals Council are located in the Office of Hearings and Appeals. The Office of Hearings and Appeals is under the dual leadership of a Chief Administrative Law Judge and an Associate Commissioner. The Position Description of the Chief Administrative Law Judge places the Chief Judge in charge of the hearings function and hearings field operation of the agency. The Associate Commissioner is placed in charge of the Appeals council and major policy making responsibilities of the Office of Hearings and Appeals. The Chief Judge reports to the Associate Commissioner who reports to the Deputy Commissioner for Disability & Income Security Programs.

*Problems with Current System:*

In the current organization of SSA the Office of Hearings and Appeals is buried in the bureaucracy and is far removed from the Commissioner. This structure prevents the Commissioner from having effective oversight of the agency hearing process. The administrative law judge adjudication function should not be treated as a staff responsibility in the agency. The administrative law judge adjudication function is a major program of the agency with every individual in this nation being a potential claimant within the system. The SSA administrative law judge hearing system protects a constitutional right of our citizens and provides a constitutionally protected due process hearing to the American public. This vital process should have direct oversight from the Commissioner and the Chief Judge should have direct interaction with the Commissioner. Another major defect in the Office of Hearings and Appeals is created by the dual leadership responsibilities of the Chief Judge and the Associate Commissioner. Frequently these two leaders are competing for power to control the administrative and/or policy decisions for this component of SSA which has deprived OHA of strong effective leadership. The lack of effective leadership and direction of the Office of Hearings and Appeals has resulted in an organization that has been deteriorating. During the past 10 plus years several reforms have been imposed on the SSA hearing process. Each attempt has resulted in failure. Subsequent to a recent change in the hearing office process that was implemented in January 2000 (HPI), the number of case depositions have dropped while the case processing time and the case backlog have increased. The result has been poorer service for the American public. Within the past several years, the Associate Commissioner attempted to reorganize the responsibilities of the Chief Judge and divest the Chief Judge of most of the powers of that office leaving the Chief Judge with some minor duties relating to judicial education and staff support for the Associate Commissioner. This scheme was thwarted by the efforts of interested individuals and organizations together with the oversight action of the Congress.

The problem has now returned with the present Associate Commissioner of the Office of Hearings and Appeals. He has striped most of the power from the Office of the Chief Judge. He treats the Chief Judge as a staff person instead of a vital policy maker who is in charge of the field operations for the hearings

function of the agency as provided for in the Chief Judge's position description. This action of the Associate Commissioner has led to a crisis within the Office of Hearings and Appeals with the last Acting Chief Judge leaving the position after having served for only a few weeks in office. The Chief Judge position for the agency is now vacant. This position has not been filled since the last Chief Judge left over a year ago.

*Proposed Reform:*

This system requires basic reform which places an established Chief Judge in charge of the agency hearing process with reporting responsibility directly to the Commissioner. We propose legislation that separates the agency hearings function from the Appeals Council and places the hearing component under the control of a Chief Judge who reports directly to the Commissioner.

The following improvements in service to the American public will result from the proposed legislation:

a. The Commissioner will have direct oversight of the hearing component of the agency which is necessary to effectively administer this important program which provides constitutional due process hearings for the American public.

b. Improved leadership and efficiency in the hearings component will permit the SSA to provide better service for the American public by increasing case dispositions, reducing processing times and reducing case backlogs.

c. The change will improve the SSA hearing process and will continue to ensure that the American public receives a fair constitutional due process hearing.

d. The proposed legislation creates an Office of Administrative Law Judges in the Social Security Administration.

e. The Office of Administrative Law Judges headed by the Chief Judge who reports directly to the Commissioner. The Chief Judge is appointed by the Commissioner for a term of 6 years.

f. The administrative law judge hearing component of SSA is regarded as an organization that is responsible for administering a major agency program which reports directly to the Commissioner. It will be no longer organized as a staff function within the agency.

g. The Office of Administrative Law Judges will have one individual, the Chief Judge, responsible for administrative operations and policy making. This will result in effective leadership of the administrative law judge function.

h. The Associate Commissioner of the Office of Hearings and Appeals will continue to head the Appeals Council.

i. This change is endorsed by the Social Security Advisory Board ("SSAB"). The SSAB recently prepared a report on the Social Security disability system that states that "[m]any believe that the Office of Hearings and Appeals is buried too low in the agency and should be elevated so that the head of the office would report directly to the agency leadership. Others believe that there should be independent status for an administrative law judge organization" *Charting the Future of Social Security's Disability Programs: The need for Fundamental Change, January 2001*, p. 19.

j. The change is a reorganization within the agency and will not result in any additional costs to the agency.

**(b) In the Alternative, Reorganize OHA to Have the Chief ALJ Report Directly to the Commissioner and Replace the Appeals Council with a Right of Appeal to Appellate Panels Staffed by ALJs that Would Be Administered by the Chief ALJ:** This proposal is identical to AALJ's proposal for an independent adjudication agency that would provide a hearing before an ALJ with a right of appeal from the individual ALJ's decision to an appellate panel staffed by ALJs, which is explained in suggestion 6(b) below, except that the Chief ALJ would report to the Commissioner rather than be the head of an independent agency. Such a reorganization may be effected by the SSA without legislation.

**(c) As an Alternative to Reorganizing OHA, Create A New Independent Agency within SSA to Issue the Final Administrative Decisions of Social Security Act Claims, Including Medicare Claims:** AALJ recommends the creation of a new ALJ-administered independent adjudication agency for Social Security Act claims that would provide a hearing before an ALJ with a right of appeal from the individual ALJ's decision to an appellate panel staffed by ALJs. The panels would consist of three ALJs who would review the cases locally. A Chief ALJ would administer the agency. The Social Security Act hearing process should be reformed by the

transfer of the authority to make final administrative adjudications of Social Security Act claims, which currently are made at the ALJ and SSA Appeals Council levels, from the Social Security Administration to a new independent adjudication agency. This agency may be called the United States Office of Hearings and Appeals ("USOHA"). This agency is to be located within the SSA.

This proposal would provide the claimants with timely, high quality, impartial and fair decisions of their claims pursuant to the Social Security Act and Administrative Procedure Act ("APA") by adjudicators who are in an agency independent of, but within, the SSA. The USOHA would have the exclusive jurisdiction to make the final administrative decisions of Social Security Act Title II and XVI claims. The USOHA would have permissive jurisdiction over other classes of cases, including Medicare cases under Social Security Act Title XVIII.

On December 4, 2001, the House passed the Medicare Regulatory and Contracting Reform Act of 2001, H.R. 3391, section 401 of which authorizes the transfer of the ALJ function from SSA to the Department of Health and Human Services by October 1, 2003, to hear and decide Medicare cases pursuant to Title XVIII of the Social Security Act. AALJ's proposal advocates placing all of the ALJs hearing Social Security Act cases into one independent agency, including Medicare cases.

The ALJ appellate panels would be akin to the Bankruptcy Court appellate panels and is one of the key features that makes the ALJ self-administration model superior to the current SSA Appeals Council model, which is a small body that cannot timely and effectively handle a heavy caseload. Based upon the Bankruptcy Court experience, the appellate panel model (1) is an appellate system that can handle a large caseload, (2) results in a shorter disposition time because the large pool of about 1,000 ALJs throughout the United States permits the timely determination of appeals that cannot take place with a small body such as the Appeals Council or a Commission or Board, (3) results in higher quality decisions because of expertise, (4) results in substantially fewer appeals to the courts and a substantially lower reversal rate by the courts because of the confidence in the high quality of the decisions, which reflects a higher degree of decision accuracy, (5) results in a substantially reduced federal court caseload, and (6) affords the claimants access to a local administrative appellate process.

This proposal requires legislation that would amend the Social Security Act.

A detailed version of the features of the proposed new agency and the rationales for such a new agency is presented in the AALJ's Statement that is published in the Report for the June 28, 2001, First Hearing in the Series on Social Security Disability Programs' Challenges and Opportunities, House Subcommittee on Social Security, No. 107-35, 107th Cong., 1st Sess., pp. 80-93. A very detailed version of the features of the proposed new agency and the rationales for such a new agency is presented in the AALJ's "Report and Recommendations for the Transfer of the Authority to Make Final Administrative Adjudications of the Social Security Act Claims from the Social Security Administration to a New Independent Regulatory Agency," which is available on the AALJ website, [www.aalj.org](http://www.aalj.org).

**(d) As an Alternative to Reorganizing OHA, Create A New Independent Agency outside SSA to Issue the Final Administrative Decisions of Social Security Act Claims, Including Medicare Claims:** Another alternative is to create a separate adjudication agency to hear Social Security Act claims, including Medicare claims. This agency would have the same organization structure as is described in section 4(c) immediately above, but it would be a separate agency outside the SSA.

Submitted respectfully,

Ronald G. Bernoski  
*President*

---

Association of Attorney-Advisors  
Paducah, Kentucky 42003

To: The Subcommittee on Social Security  
Of the Committee on Ways and Means

Subject: Submission of Comments related to Hearing on May 2, 2002

I am the President of the Association of Attorney-Advisors, an organization comprised of attorneys throughout OHA, and includes in its membership both GS-12 Attorney-Advisors and GS-13 Senior Attorney-Advisors, as well as some attorneys who are members of management and some Administrative Law Judges. We have been reading with great interest the submissions of some of our fellow professionals who are concerned with the future direction of OHA. This paper is not designed to

exhaust all of issues currently facing OHA, but to comment on some of the proposals which have been presented.

1. **DDS receipt of hearing functions.** It has been proposed that the hearing functions be removed from OHA, thereby dissolving the organization, and be added to the responsibilities of the state agencies. The Association of Attorney-Advisors is very much against that plan. It is the DDS position that disability determinations are solely a medical evaluation. The DDS believes that the ultimate arbitrator of disability should be the state agency physicians who review the medical records. This is contrary to existing law and regulation. The Social Security Act, related Regulations, Rulings and case law set forth the **legal** framework for analyzing the medical evidence of record. The ultimate decision regarding disability is reserved for the Commissioner, rather than any physician including a treating physician, much less a non-examining medical source. The law recognizes the need to evaluate multiple pieces of evidence from multiple sources and assign weight to each. Intangible aspects of a case, such as the credibility of a claimant's complaints of pain, require more analysis than a review of objective tests alone can give. (*see* 20 CFR 404.1512, 20 CFR 416.912, 20 CFR 404.1527, 20 CFR 416.927, Social Security Ruling 96-2p, Social Security Ruling 96-5p and Social Security Ruling 96-6p.

Several years ago, the Agency underwent Process Unification Training (PUT) to help bring the state agencies into line with the legal requirements for determining disability. No substantive change has occurred in the state processing of claims. Little effort is made to properly evaluate a claimant's credibility. Further, in many cases, development is not near completion when files are turned over to OHA. The state agencies have not shown the capacity for managing the legal requirements of our joint business. Turning the hearing process over to the state agency would dramatically change the claimant's due process rights and would eliminate his ability to receive a proper legal determination regarding whether entitlement to benefits.

The Association is also concerned with the timelines promised in proposal. One of the challenging aspects of disability determinations is ensuring reasonable development of the record has occurred. Many medical sources take longer to respond to requests for records than the proposed time frames would allow. One reason for the disparity among cases denied at the DDS level but paid at the OHA level is the additional development that OHA accomplishes. The "fair hearing" proposed by the DDS is fair **only** if adequate development has occurred. A "fair hearing" is fair **only**, if after being apprised of his rights, a claimant has sufficient time to obtain representation and opportunity to ensure the record is as complete as possible.

2. **Elimination of reconsideration reviews.** One of the programs which has been tested is the elimination of the reconsideration level of review at the state agency level. We recommend this be considered for a nationwide test. As a general rule, the reconsideration level of evaluation does not add value to the process. Little new development is performed at that step. If the funds that were used to carry out the reconsideration process were used for better development at the initial level of consideration or to increase fees paid to medical consultants, the claimant would be much better served.

3. **Consideration of a Government Representative Program.** The government representation program would have many advantages. Administrative Law Judges would be relieved of the burden of case development and could assume a more traditional judicial role. They could focus on hearing and deciding cases, rather than performing the ongoing reviews required in current efforts to schedule cases. Attorneys assuming the duties of government representative would have the opportunity to more fully utilize their skills as advocates. Many of the OHA attorneys have backgrounds as former prosecutors and civil litigators who are more than capable of evaluating a case, ordering development, negotiating settlements, and making presentations during the hearing. The job of the Administrative Law Judge would be made much easier by having issues defined and ready for evaluation at the hearing, thus expediting the process for the claimant. For those attorneys who do not want these additional duties, there will still be a need for competent attorneys to engage solely in decision writing for the Administrative Law Judges. It makes sense for the Agency to fully utilize the experience and skill of its staff. The Association of Attorney-Advisors feels this program has a long-term promise.

4. **The "old" Senior Attorney Program.** The only program which has thus far demonstrated the ability to speed up the processing of favorable decisions is the prior Senior Attorney Program. The Agency is well aware of the success of the program in cutting down the backlog of cases and reducing average case processing times. Serious consideration should be given to returning signature authority to the Senior Attorneys.

5. **Two other recommendations for immediate relief.** There were numerous problems with HPI, which have been addressed in depth in other documents. At the

heart of the failure was the lack of trust the Agency had in its management and employees. Local management had minimal input in the implementation in HPI. Forcing a “one size fits all” approach will not bring about further improvement. Prior to bringing about any change, the Agency needs to collectively take a deep breath and look at the progress of individual offices. Some offices are fully staffed in judges, others are woefully short. Some offices need more managers to handle the workload, others may need to decrease the management team. Some offices are overstaffed in writers, others need more. Almost every office needs some degree of supplemental support staff. We need to avoid any approach where manning edicts are made across the board ranging from full-time receptionists to additional case technicians. Local management should be given a voice to individual office manning concerns.

A) Support Staff—Funding needs to be made available to be able to hire adequate support staff to manage all the administrative functions associated with hearing cases. Local management needs to ensure there staff is doing its best to work up cases, however, in some offices workload far exceeds the available staff. It is inexcusable that a claimant would have to wait months just to have a case technician work up his case.

B) Administrative Law Judge support—In some offices, the staffing of Administrative Law Judge slots is significantly less than needed to adequately hear cases. While many offices report the need for more Administrative Law Judges, hiring could be delayed indefinitely due to the litigation with OPM in regards to the Azdell case. Pending resolution of Azdell, some measure must be taken to get additional cases heard. The time has come for serious consideration of some form of magistrate’s program, where claimants could opt to have their cases heard by an attorney magistrate in lieu of a judge. Unlike the Adjudication Officer program, the attorney magistrate would need to be empowered to hold full hearings and issue unfavorable as well as favorable decisions. Although increasing the number of Administrative Law Judges would be preferred, until that is possible, the position of magistrate would enable additional cases to be heard and give claimant’s final resolution in the disability process.

Thank you for your attention. This is intended to be a general overview of our position. We welcome the opportunity to discuss any plans in further detail. We hope that a process can be worked out to enable OHA to better serve the needs of the claimants and the general public.

Lisa Russell Hall  
*President*

---

Federal Bar Association, Social Security Section  
Washington DC 20037  
*May 16, 2002*

The Honorable Clay Shaw, Jr.  
Chairman  
Subcommittee on Social Security  
U.S. House of Representatives  
B-316 Rayburn House Office Building  
Washington, D.C. 20015

Re: Challenges Facing the New Commissioner of Social Security

Dear Chairman Shaw:

Thank you for holding the hearing on May 2, 2002 on the challenges facing the new Commissioner of Social Security. Those challenges are of considerable interest to the membership of the Social Security Section of the Federal Bar Association (FBA), and we request that this correspondence be entered into the hearing record. The comments presented herein are exclusively those of the Social Security Section of the FBA and do not represent the official views of the Social Security Administration, in whose employment we serve as Administrative Law Judges.

As you know, the Federal Bar Association is the foremost professional association for attorneys engaged in the practice of law before federal administrative agencies and the federal courts. Fifteen thousand members of the legal profession belong to the Federal Bar Association. They are affiliated with over 100 FBA chapters across the nation. There are also over a dozen sections organized by substantive areas of practice such as the Social Security Section, of which I am the Chair.

Unlike other organizations associated with Social Security disability practice that tend to represent the narrow interests of one specific group, the Federal Bar Asso-

ciation's Social Security Section encompasses all attorneys involved in Social Security disability adjudication. Our members include:

- Attorney Representatives of claimants
- Administrative Law Judges (ALJs)
- Administrative Judges at the Appeals Council
- Staff Attorneys at the Office of Hearings and Appeals
- Attorneys at the Social Security Administration's Office of General Counsel
- U.S. Attorneys
- U.S. Magistrate Judges, District Court Judges and Circuit Court Judges

The primary interest of the FBA's Social Security Section is in the effectiveness of the adjudicatory processes associated with hearings in the Office of Hearings and Appeals (OHA), the appeal process at the Appeals Council, and judicial review in the federal courts. It is the Section's collective view that the Social Security disability program is under considerable strain. Current delays in the processing of claims are unacceptable and the quality of decisions at all levels is less than ideal. The Commissioner is faced with a daunting task. It is with that in mind that we offer the following comments.

### **1. Fully Implement Process Unification at All Levels of Adjudication**

Process unification is essential to an efficient, timely and accurate disability adjudication system that ensures disabled claimants will be paid as early in the process as possible.

In the mid-1990's the Social Security Administration (SSA) acknowledged the inconsistency created by the Disability Determination Services (DDS) applying one set of rules for determining eligibility through the Program Operations Manual (POMS), and its Administrative Law Judges, Appeals Council, and the federal courts applying another through statute, regulations, rulings and case law. Consequently, in 1996 SSA initiated Process Unification Training for all DDSs, ALJs, and the Appeals Council. The training was based on a set of rulings—the "Process Unification Rulings"—that were designed to guide all adjudicators at every level. It was anticipated that the DDSs would no longer rely exclusively on POMS, and that they would begin to write an analysis of their decision-making. This rationalized determination, in turn, would be granted some deference by reviewing ALJs and Appeals Council.

This plan for a unified process never came about, however. Unfortunately, the DDSs did not follow through and continued to apply the narrow standards of POMS, giving mere lip service to claimants' subjective complaints. Today they continue to fail to provide any meaningful analysis of their decisions, leaving unclear what standard(s) they are applying to their review of disability claims.

We submit that SSA had it right the first time when it recognized the need for process unification. Fairness requires that all adjudicators assess a disability claim using the same legal standards and requirements.

A fundamental premise of the SSA process unification effort was that disability benefits should be awarded to claimants as soon as their disability has been determined under the law. The burden of long delays to claimants before the statute, regulations, rulings, and case law are applied is unacceptable and does not serve the interests of justice. Quite simply, it can wreak havoc in the lives of claimants.

The Commissioner recently announced that in an effort to deal with the backlog and delays at OHA, ALJs would begin to review raw, unpulled files as they arrived from DDS. The purpose of the review is twofold: to allow those claims that can be allowed on the record without a hearing, and to undertake immediate development of cases requiring additional development.

On its face, this initiative attests to the failure of process unification. If such an initiative can be productive and result in a significant number of dispositions or significant additional development, then the cases were either: (1) not decided correctly under the law at the DDS; or (2) not adequately developed at the DDS.

### **2. Preservation of the Due Process Hearing Before an Administrative Law Judge**

It is our understanding that various proposals are being made that would eliminate a hearing before an Administrative Law Judge. The FBA strongly opposes any such effort for the following reasons.

In 1983, a Senate Subcommittee on Oversight of Government Management of the Committee on Governmental Affairs conducted a hearing that inquired into the role of the ALJ in disability hearings. The report provided in part:

The principal finding of the Subcommittee is that the SSA is pressuring its ALJs to reduce the rate at which they allow disabled persons to participate in the Social Security Disability Program . . . . [The Subcommittee found that the SSA was limiting the decisional independence of ALJs through its Rulings, its non-acquiescence to federal court decisions, and its increasing of case quotas that reduced the time an ALJ could spend on each case to develop additional evidence that may support an allowance decision, among other things.] The APA mandates that the ALJ be an independent, impartial adjudicator in the administrative process and in so doing separates the adjudicative and prosecutorial functions of an agency. The ALJ is the only impartial, independent adjudicator available to the claimant in the administrative process, and the only person who stands between the claimant and the whim of agency bias and policy. If the ALJ is subordinated to the role of a mere employee, an instrument and mouthpiece for the SSA, then we will have returned to the days when the agency was both prosecutor and judge.

Sen. Rep. No. 98-111 (September 16, 1983).

The Administrative Procedure Act requires that independent administrative law judges be selected on a merit basis and insulated from agency bias and pressure in performing the adjudicative function. *See Butz v. Economu*, 458 U.S. 478, 513 (1978). Regrettably, as noted in the Senate Report, SSA has in the past attempted to subvert the statutory independence of its administrative law judges. It has sought overtly and at other times more subtly to influence the decisions of its ALJs to achieve some predetermined acceptable allowance rate or altogether cease payment of benefits to a particular class of disabled beneficiaries. In one well-publicized episode in 1982, SSA attempted to terminate benefits to thousands of Americans with mental disabilities, triggering the reversal in many cases of that policy decision by SSA ALJs who applied the law and restored the benefits. The American Bar Association in fact honored the SSA ALJ corps for their outstanding efforts during the period from 1982-84 to protect the administrative adjudication within their agency, to preserve the public confidence in the fairness of governmental institutions and to uphold the rule of law.

A due process hearing conducted by an ALJ is a protection against potential agency bias and policy that may at times run contrary to the law as mandated by Congress. Disability claimants should not be deprived of this step in the disability process. That being said, there remains the critical issue of unacceptably long delays at OHA. The causes of these delays are many, but most obvious is the abject failure of the Hearing Process Improvement (HPI) initiative. Prior to HPI, in FY 1998, ALJs issued 618,578 decisions. In FY 2001, with full implementation of HPI, that figure plummeted to 465,228.

The defects in HPI, both in design and implementation, are legion and need not be enumerated here. Suffice it to say, a fundamental problem was the de-legalization of the adjudicative process, which included the removal of judges from the case development function. Over 350 employees, primarily from the clerical ranks, were promoted to the position of "paralegal". Their promotion left OHA bereft of employees trained in "pulling cases" in preparation for adjudication by administrative law judges. This created fewer cases ready for judges to hear and decide. The employees who have been promoted to the "paralegal" position, in almost all cases, have had no legal training whatsoever and in their promotion were not even required to demonstrate an ability to write; yet, they are tasked with writing draft decisions for the judges—decisions that are subject to judicial review in U.S. District Court. Attorneys could have filled the positions encumbered by these "paralegals" as the two positions are at the same grade level. Instead, SSA made the conscious choice to fill these slots with clerical workers rather than trained lawyers. It goes without saying that under this new arrangement the review time required for judges to edit and revise their decisions has increased exponentially further delaying disposition of claimants' cases.

OHA performs an adjudicative function and its procedures and support systems need to be designed and implemented to facilitate that function. Clearly, with proper and adequate support, ALJs are capable of expeditiously adjudicating the cases before them while providing claimants with due process. In addition, OHA should be under the direction of a Chief Administrative Law Judge who is provided appropriate administrative assistance in carrying out the adjudicative function. The administrative and support system should not be dictating to the judges how the adjudicative function should be accomplished.

### **3. Extension of Fee Withholding to Supplemental Security Income (SSI) Cases**

Attorneys who practice Social Security disability law overwhelmingly endorse the extension of withholding attorney fees in SSI cases, due to the high risk of non-payment for services rendered. This is reflected in SSA's FY 2000 statistics at the OHA level, which show that 74.9% of Title II claimants were represented while only 45.9% of title XVI claimants were represented. Many attorneys simply decline to handle SSI cases, and this appears to be a growing trend. Those who do accept such cases tend to do so out of a sense of obligation and often in the spirit of *pro bono* work. SSI claimants should not have to rely upon the collective good conscience of a few attorneys for representation.

While Administrative Law Judges are charged with protecting the interests of *pro se* claimants and do their best to meet that obligation, it is done in the context of a very heavy caseload. ALJs carry hundreds of cases on their dockets. The reality is that a represented claimant, by virtue of the time, attention and expertise that a representative can provide, has a better chance of prevailing in his appeal. This is recognized by the Consortium for Citizens with Disabilities (CCD), as reflected in Marty Ford's testimony at the May, 2001 hearing of your Subcommittee. While resources such as legal services and *pro bono* attorney work are invaluable, they are limited in their availability. As the CCD pointed out, the potential denial of benefits for SSI claimants, due to lack of experienced legal representation, far outweighs the burden of having reasonable attorney fees withheld from their back benefits.

It is our understanding that SSA now supports this provision and we applaud that decision. We believe attorney fee withholding in SSI cases will benefit SSA by increasing attorney representation which will, in turn, serve to screen cases, educate claimants regarding the eligibility criteria, aid in the production of evidence, and further the goal of insuring that the proper decision is made as soon as possible.

### **4. Establishment of a Comprehensive Quality Assurance Program Throughout the Disability Program**

The General Accounting office has repeatedly reported that SSA needs to implement a comprehensive and meaningful quality assurance system. SSA announced a plan to revamp its existing quality assurance system in 1994. Yet, in 2001 SSA acknowledged that its quality assurance system needed to more effectively promote uniform and consistent disability decisions across all geographic and adjudicative levels. GAO has made specific recommendations as to the content of such a plan.

The Commissioner has appointed a Regional Commissioner to lead an effort to establish a quality assurance program. We commend this action and encourage the development of a comprehensive quality assurance program that establishes quality standards at all levels of the claims process. The disability program is a nationwide program and it is not acceptable to have allowance rates at the DDS level on Title II disability claims in FY 2000 ranging from a low of 31% in one state to a high of 65% in another state.

A quality assurance plan should, for example, set the standard for the collection of evidence at all levels of review, including DDS. Much of the delay in the life of a disability claim is due to the time needed to collect relevant evidence. For example, if a claimant alleges disability due to severe injuries in an automobile accident and DDS only obtains the primary care physician records of general care and fails to obtain the records of the trauma surgeon and hospital, it will not have the relevant evidence needed to make an accurate determination. While a denial based on the primary care physician records may be technically correct, given the record as developed, that record is wholly inadequate. The claimant is then forced to appeal the denial until someone develops the complete and relevant record. If the correct record were obtained at the DDS level, the accuracy of the DDS decision could be realistically measured. It is a meaningless statistic to say the DDS made the right decision, when it was rendered on an inadequate record.

Similarly, delays at the ALJ level occur while the relevant evidence is obtained and the file is assembled. One of SSA's redesign initiatives, the Adjudication Officer (AO), sought to accomplish the generation of evidence and file assembly at the DDS level. The AO developed the record and granted eligible claims, forwarding the ineligible claims to an ALJ for further review. In those cases that were denied, the AO prepared a summary of the evidence, and certified that the record was complete. The case was then heard by an ALJ generally within 60 to 90 days of its receipt and little or no further development of the record was required. Concerns were raised about the AO project because a higher percentage of claims was being paid at the DDS level, and administrative costs for assembling a complete record and providing a summary were high. The project, however, resulted in correct decisions earlier in the process and savings of administrative costs and time at OHA.

A Quality Assurance Program should measure the adequacy of the file, the quality of the analysis, and the correctness of decisions at all levels. It should also undertake to measure the accuracy of both allowances and denials of claims. At the DDS level, quality review work currently performed by SSA's Disability Quality Branch focuses on allowances of claims rather than denials. This creates systemic pressure on the DDS examiner to avoid erroneous allowances, but not necessarily erroneous denials. Since an erroneous denial is much less likely to be scrutinized by quality control, a denial represents a far more attractive and safer decision option for the DDS examiner. At the ALJ level, the opposite is true. To be effective, without subtly influencing the outcome of decision-making, a quality assurance program should be neutral and refrain from pushing the process toward allowing or disallowing claims. The QA program must measure the accuracy of both allowances and denials.

#### **5. Electronic Folders (E-DIB) Must be Adequately Funded, Closely Monitored, and Not Viewed as the Complete Answer to Disability Adjudication Problems**

The Commissioner has announced that the entire record at all levels will be contained in an electronic folder (E-DIB) by January, 2004. The E-DIB initiative has the potential to provide significant improvement in the speed of claims adjudication. However, given SSA's track record in the conceptualization and implementation of HPI and other redesign initiatives, we strongly encourage the application of significant care and attention to the testing and introduction of E-DIB.

Very few details concerning the plan have been announced, and there are innumerable questions relating to the implementation of this initiative. We urge extensive testing at the pilot stage and vigilant monitoring of its rollout. Given the shortage of personnel within DDS and OHA to handle the current caseload, careful attention also should be devoted to staffing plans for those who will maintain the systems and scan the documents included in the electronic folder. Attention should also be devoted to whether E-DIB coverage will extend to claims pending at the time of conversion or whether this will include only claims filed after January, 2004. The Social Security Administration needs to work with the representative community to insure the confidentiality of the claimant's record, while also assuring safety and security of the internet system itself. Access to the claimant's record by those on the other side of the digital divide, who lack compatible equipment, also should be considered.

#### **6. Elimination of Reconsideration and Reorganization of the Appeals Council**

The FBA seriously questions whether the current processes of DDS level reconsideration and Appeals Council review are serving their intended purposes. Thoughtful scrutiny should be devoted to whether the time spent on these two review processes contributes to the effective adjudication of disability claims and the interests of justice.

A claimant who is initially denied benefits may request DDS reconsideration of the denial decision. Reconsideration is widely—and correctly—viewed as little more than a rubber stamp of the initial denial. During FY 2001, of an average 100 claims processed by DDS, 40 were approved at the initial level and 4 at the reconsideration level. Time spent at the reconsideration level was 69 days. Given the few requests for reconsideration that ultimately are successful, concerns can be deservedly raised whether reconsideration represents a meaningful step in the disability process.

Similar attention should be devoted to the role and effectiveness of Appeals Council review. Upon receipt of an adverse claims decision by an ALJ, a claimant may appeal to the Appeals Council, which then undertakes a review on the record. While the Appeals Council serves a valuable purpose in screening out many cases that should not reach federal court due to deficiencies in the ALJ decisions, the Appeals Council is overwhelmed by its staggering workload. It has taken steps to shorten its appeal time, and according to the General Accounting Office, reduced the amount of time to process an appeal from 458 days in FY 1999 to 447 days in FY 1999. This is still an unduly long period of time.

The substantive legal correctness of the decisions of the Appeals Council has also been frequently challenged. In a mounting number of cases appealed to U.S. District Court after denial of review by the Appeals Council, the Office of General Counsel and U.S. Attorneys have asked the Appeals Council to agree to a "voluntary remand." These requests are prompted by concerns over the ability to defend the underlying ALJ decision—the decision that had already been affirmed by the Appeals Council. The frequency of such "voluntary remands" indicates that in its rush to process appeals, the Appeals Council is not getting it right the first time. The record the Appeals Council agrees to take back in a voluntary remand is usually identical

to the record it initially reviewed. If the ALJ decision is indefensible, it should have been caught by the Appeals Council before the case proceeded to federal court. That after all is the role of the Appeals Council in the request for review process.

Therefore, we believe that the Commissioner should review and study the role and responsibility of the Appeals Council, with special attention devoted to: the usefulness and necessity for the request for review function; the merits of redesign of the Appeals Council mission to focus on quality review; and the establishment of a time-limit for the processing of requests for review, permitting cases not reached within the allowable time to go directly to court.

In closing, we thank the Subcommittee for taking favorable action on fee withholding for SSI cases and for holding this important hearing on the challenges facing the new Commissioner. The Social Security Section of the Federal Bar Association looks forward to working with you on this and future issues relating to Social Security disability case adjudication. Please contact Bruce Moyer, our government relations counsel (301-270-8115) if you have any questions. Thank you for your consideration.

Sincerely,

Kathleen McGraw  
*Chair*

Frederick R. Waitsman  
*Chair, Legislative Committee*

---

**Statement of David Marks, West Coast Director, Hepatitis C Action Movement, Saratoga Springs, New York**

On behalf of the Hepatitis C Action Movement, I would like to express my concerns with the Social Security Administration's current standing on awarding disability benefits on Hepatitis C related claims.

Because there was no effective method for detecting the Hepatitis C Virus until 1992, the severity of this epidemic is still greatly under-estimated and the U.S. Government has yet to provide adequate relief to those who are suffering from this virus. We are hopeful that Commissioner Barnhart will lead the Social Security Administration into the 21st Century and the visions of this new administration will include relief for the growing number of people who are only now being diagnosed with a virus contracted a quarter century ago.

When the HIV epidemic struck America in the 1980s, the Social Security Administration realized the burden having a potentially fatal virus has on the body and updated the disability impairment listings to include HIV. However, since the SSA does not yet recognize Hepatitis C, a person suffering from HCV is not judged by the same standards. The policy of not awarding disability benefits for HCV victims until they are in end stage liver failure is the equivalent of waiting until a person with HIV is dying of end stage pneumonia before approving their disability claim. The number of people infected with HCV out numbers those with HIV nearly 5 to 1 and the number of deaths from HCV will triple in the next 5 years, out numbering that of AIDS. Just as the SSA was quick to adapt the system to include the needs of a new generation when faced with the HIV epidemic, the current administration must once again adapt to include the needs of those with HCV.

The current position adopted by the Social Security Administration is to review all Hepatitis C related disability claims based on the guidelines set forth under Section 5.05 of the List of Impairments titled "Chronic Liver Disease." However, the guidelines under this heading were not written with the Hepatitis C infection in mind and do not consider the myriad of disabling symptoms which accompany the Hepatitis C infection. These guidelines do not adequately reflect the current needs of the five million known American's who are inflicted with this insidious virus.

HCV has many disabling effects in addition to chronic liver failure, which are not currently recognized by the SSA. The Hepatitis C virus lives in the body for 10-20 years before showing any outward symptoms, so the infected go undiagnosed for decades. However, during these years, the liver becomes an unwilling host for the virus and the liver deteriorates. Once obvious symptoms begin to appear, the damage is irreversible and quite debilitating. Yet, the end stage liver failure required by the SSA to qualify for disability claims may not occur for several years after the virus begins to actively destroy the liver and kidneys.

The liver is the body's largest internal organ and provides many critical functions needed to sustain a healthy lifestyle and when the HCV attacks the liver, performing everyday tasks becomes difficult. However, the Hepatitis C virus affects

more than just the liver. Symptoms a person with HCV may suffer before qualifying for Social Security disability include: Extreme debilitating fatigue, memory loss, confusion, nausea, painful swollen muscles and joints, depression, anxiety, numb and tingling limbs, enlarged spleen, inflammation or bleeding in the stomach and esophagus and hepatocellular carcinoma.

The result of the current SSA review policy leaves people too sick to work and not sick enough to receive assistance. Currently, there are people infected with HCV on the liver transplant list that still do not meet the strict criteria under the current SSA guidelines. Because most health insurance policies are contingent upon their employment, when their job is lost, so are their health benefits. The current cost of treatment for Hepatitis C is \$32,000 a year as there are no generic options available. The unfortunate result is the choice between spending their life savings on medicine or life itself.

Even when the HCV patient is able to continue their health insurance, the side effects of the treatment are often more severe than the infection itself. The side effects of the Interferon combination therapy are similar to chemotherapy and include nausea, fever, insomnia, swollen and painful muscles and joints, depression, confusion, thyroid disease and flu-like symptoms, just to name the most common. Working a full time job while undergoing the 12 to 36 month regiment is nearly impossible.

This epidemic can not continue to be ignored any longer. It is time that the Social Security Administration realizes the devastating effects of their policy and updates their current policy to include the 5 million Americans infected with HCV. We are hopeful the Social Security Administration under the new vision of Commissioner Barnhart, will take on the new challenges facing today and will be granted the proper resources to be able to meet their responsibilities to the 5 million Americans infected with HCV.

Respectfully,

David Marks  
*West Coast Director*

---

**Statement of Anthony T. Pezza, President, National Council of Social Security Management Associations Inc., Hackensack, New Jersey**

Chairman Shaw and Members of the Subcommittee, my name is Anthony T. Pezza and I am submitting this statement for the record on behalf of the National Council of Social Security Management Associations (NCSSMA).

As you know, Mr. Chairman, the NCSSMA is a membership organization of more than 3000 Social Security managers and supervisors who work in SSA's 1400 field offices and teleservice centers throughout the nation. It is most often our members who work with your staffs when problems and issues arise with Social Security recipients in your Congressional Districts. Since our organization was founded thirty-two years ago, the NCSSMA has been a strong advocate of locally delivered services nationwide to meet the variety of needs of beneficiaries, claimants and the general public. We, like you, consider our top priority to be a strong and stable Social Security Administration that delivers quality services to our clients and your constituents.

The new Commissioner of Social Security faces a myriad of challenges as she assumes her new responsibilities. This is a critical time for the Social Security Administration and the programs it administers. Demographic, economic, technological and cultural forces are combining to stress and test an agency that has, since its inception during the Great Depression, been a paragon of service to the American public. Now SSA will be tested as never before and it will be the new Commissioner who will have to lead the agency in meeting the challenges ahead.

In discussing the challenges facing the Commissioner, we will do so from the perspective of SSA's front-line managers and supervisors. We experience first hand the impact of SSA's programs and processes on the lives of our citizens and consequently are in a prime position to identify and assess the challenges ahead.

SSA is, in a manner of speaking, a growth industry. With the aging of the 76 million strong "Baby Boomers" will come a burgeoning in the agency's workloads. Between now and the year 2010, SSA's actuaries project that the number of retirement and survivor beneficiaries will increase by 16 percent, the number of disability beneficiaries by a staggering 50 percent and the number of SSI recipients by almost 15 percent. At the same time, SSA estimates that 28,000 of its employees will be eligible to retire and another 10,000 will leave for other reasons. This amounts to more than half the current workforce and could result in a significant loss of experienced

people and a drain of institutional knowledge. Additionally, it has been estimated that if SSA attempts to process its projected workload in the year 2010 using the methods it currently employs there will be a 20,000 shortfall in workyears.

With this as background we see the following as among the major challenges facing the new Commissioner:

#### **Resources and Service Levels**

One of the first issues and challenges facing the Commissioner is the question of whether SSA has the resources appropriate to the levels of service it must deliver to the American public. The Social Security Advisory Board in its September, 1999 report entitled: "How The Social Security Administration Can Improve Its Service To The Public" summarized this issue by saying, ". . . the agency has a serious administrative deficit at present in that the level of service that is being provided is less than is required to meet the needs of the public." Over the two years since that was written, the situation has not improved. Agency resources have not kept pace with the growth in workloads. SSA simply does not have enough staff to deliver the level of service currently expected of the agency.

This leads inexorably, to the issue of how SSA's administrative costs are funded. SSA's administrative costs like its program costs are funded by the Social Security Trust Funds through an account entitled the "Limitation on Administrative Expenses" (LAE). As pointed out by the Social Security Advisory Board in its February, 2001 report entitled, "Agenda For Social Security: Challenges For The New Congress And The New Administration": "Both workers and employers contribute to the self-financed Social Security System, and are entitled to receive service that is of high quality." We agree with the Board that SSA's administrative spending should be set at a level that fits the needs of Social Security's contributors and beneficiaries. Under no circumstances should SSA be required to compete for funding with health, education and other human services functions.

Citizens contributing over their working lives to the Social Security Trust Funds are paying not only for their benefits, but also for the service necessary to process their claims, answer their questions, send them their payments and the myriad other functions performed by SSA to administer the Social Security programs. Each citizen has a right to expect the best service possible.

We urge that SSA's budget requests be considered separate from others in the HHS/Labor appropriations process. Because the LAE is funded by the Social Security Trust Funds its budget should be considered outside of the discretionary budget allocation, although we recognize the importance of continued Congressional oversight of this account.

#### **Current Service**

The issue of funding SSA's administrative costs notwithstanding, the service SSA is providing today is, in our judgement, the most important challenge facing the Commissioner. SSA needs to provide the best service possible to those who seek service now, no matter how they choose to seek that service. The Staffing Survey released by the National Council of Social Security Management Associations early last year, as well as recent reports issued by the Social Security Advisory Board have raised troubling questions about whether adequate resources are being allocated to the direct service being provided by SSA's network of field offices and tele-service centers. As a direct result of its survey, the NCSMA called for an increase in frontline staffing in SSA's network of field offices. It asked that SSA's budget establish a base of 33,500 full-time equivalents (FTEs) in SSA's field offices, an increase of approximately 5000 FTEs over current staffing levels.

Short of obtaining more resources, the Commissioner will be faced with the challenge of apportioning current scarce resources among SSA's various components. In our judgement, this should be done with a view toward allocating direct service components first. There is nothing more important than the service SSA provides our citizens today.

#### **Disability**

SSA's disability programs have been under severe stress for a number of years. As reported by the Social Security Advisory Board in its January 2001 report entitled, "Charting the Future of Social Security's Disability Programs: The Need for Fundamental Change", SSA's actuaries project that between now and 2010 the number of Title II disability beneficiaries will increase by 50% and the number of SSI disability recipients by 15%. This tremendous increase in disability claims workloads will further strain a system that is already at the breaking point. Disability claims workloads are rising around the country. It was reported a few

months ago that 134,000 disability cases were waiting to be assigned to Disability Examiners in various Disability Determination Services. This is just the “tip of the iceberg”. SSA has been attempting to deal with its problems in the disability area for many years, but when all is said and done, from the claimant’s perspective, little has changed. The root causes of the disability dilemma were accurately described by the Social Security Advisory Board when it reported: “. . . the structural problems of the agency’s disability determinations and appeals process . . . are at the heart of many of the agency’s service delivery problems.”

While we believe that it is appropriate and desirable for the Commissioner to develop a proposal to revamp our national disability program, we also believe that given the burgeoning workload (which is unrelenting) and the political realities (which will be difficult and time-consuming to deal with), it would not be prudent to count on a new national disability program in time to avoid a service delivery meltdown in the current program.

The challenge for the Commissioner will be to move quickly to improve performance under the current system. The experience and data obtained from the many pilots and studies over recent years should be used to make necessary adjustments in the current process pending a more expansive solution.

#### **Workforce Transition**

The impending “Retirement Wave” presents the Commissioner with the immediate and critical challenge of replacing experienced personnel with new hires who must be trained and mentored while workloads and service demands are increasing. More than half of SSA’s current workforce could leave by the year 2010. Many of the people leaving will be those with years of priceless experience in administering the most complex laws and regulations on the federal books. It is tempting to think that technological aids can be developed to guide employees through the complexities to the right answer or course of action in any particular case or situation. It is also tempting to think that a combination of technological aids and new training protocols will make our new employees more productive more quickly. But consider this, it literally takes years for a Claims Representative (SSA’s chief technical/direct service operative) to become a fully competent journeyman. It takes about the same length of time to develop a journeyman Disability Examiner. The luxury of time to deal with the workforce transition issue diminishes daily.

We urge the Commissioner to seek from the Administration and the Congress the authority and funding to do advance hiring, in significant numbers, of “replacement” personnel so that workforce transition can take place in a measured and effective manner. SSA needs to be in a position to take advantage of the opportunity of having the new workforce trained and mentored by the experienced people who will be retiring in increasing numbers over the next few years.

#### **Organizational Framework**

The Social Security Advisory Board has recommended that SSA consider organizational changes in order to create a more service-oriented organization. We believe that this is a challenge facing the Commissioner. Increased pressure and demand for SSA’s essential public services have exacerbated the need for change. SSA’s organizational structure must be revamped to put its operational mission first.

SSA needs an organizational structure that pares support functions to realistic levels. While support functions performed at the central office, regional and area levels are often essential, they should not be staffed at the expense of direct public service.

In addition, SSA needs to ensure that a larger percentage of its key executives, especially those with operational responsibilities, bring with them the knowledge and experience that comes from having spent significant time working in SSA’s direct service facilities.

#### **Manager/Supervisor Ratios**

More than ample evidence exists to suggest that SSA went too far in the delaying of its managers and supervisors. According to former Acting Commissioner Massanari, as a result of the delaying effort initiated by the now defunct NPR, SSA has suffered a net loss of 1423 supervisory positions since 1993. The vast majority of these losses came in SSA’s front-line field offices and teleservice centers. The impact of these losses in terms of diminished public service cannot be overstated.

In its September, 1999 report entitled “How the Social Security Administration Can Improve Its Service to the Public” the Social Security Advisory Board wrote: “As implemented by SSA, the reduction in the number of managers and supervisors

is particularly problematic." SSA achieved the management-staff ratio recommended by the NPR, but in the view of the Board, this achievement came at a "high price." More recently, the National Council of Social Security Management Associations Staffing Survey released in March, 2001 revealed quality, training and service delivery problems attributed in large measure to the decline in the number of management and supervisory positions in SSA's field offices. As a pertinent aside, OMB Director Mitch Daniels has defined direct service positions as "positions that interact with citizens." By that definition, every management and supervisory position in every field office and teleservice center is a direct service position. They all interact with citizens on a daily basis and consequently, by the definition applied by the current OMB Director, each manager and supervisor lost to delayering was a loss in direct service to the American public.

The need to address these cutbacks so as to achieve and maintain adequate levels of quality, training and public service will be another challenge facing the Commissioner.

### **Organizational Culture**

The Social Security Advisory Board in both its September, 1999 report and in its February, 2001 report made reference to the need for the agency's leadership to address what they termed "long standing institutional problems." In both reports the Board states that ". . . SSA has a strong institutional resistance to open discussion of the agency's problems. Although this attitude has apparently persisted for many years and may be related to the agency's historic "can do" approach, it is particularly inappropriate and troubling today, given the scope and magnitude of the agency's problems."

Related to this problem is a belief among field office and teleservice center management that their offices are being micromanaged. There appears to be a strong emphasis on top down management. There is a proliferation of numeric goals that are increasingly remotely monitored. A negative consequence of this approach is that onsite managers are restricted in their use of judgement and initiative and are constrained in their use of resources to obtain optimum public service given local circumstances.

The challenge for the Commissioner is to be sensitive to these issues and to the perceptions arising therefrom.

### **Public Awareness**

For a long time there has been recognition of the fact that there is a critical need to strengthen public understanding of Social Security programs. The agency has set a strategic objective of increasing public awareness of Social Security programs in five critical areas: (1) Basic program facts, (2) Financial value to individuals, (3) Economic and social impact of programs, (4) How programs are financed today, (5) Financing issues and options. The goal is to have 9 out of 10 Americans knowledgeable in these areas by 2005. This is a desirable goal and represents a significant challenge for the Commissioner.

If this challenge is to be met, it is essential that SSA reinvigorate the role and capacity of our local community based field offices in the area of public information.

### **Technology**

SSA's Service Vision details a very impressive array of technological enhancements that are intended to enable the agency to deal with increased workloads and public demand within assumed budgetary constraints. These enhancements are desirable and arguably essential to the future viability of SSA's service. But technology is only effective if used and used correctly by employees. The challenge for the Commissioner is to make that happen.

The Commissioner needs to examine how technology is utilized in SSA. Does the agency have the skilled programmers required to develop needed software timely and efficiently? Does the agency have in place the skilled resources necessary to ensure the effective maintenance and updating of its computer systems? And, importantly from the viewpoint of field management, does that agency effectively provide for systems support in field offices and teleservice centers?

Regarding this last question, we feel there is a definite need to take a fresh look at systems support at the field office and teleservice center level. Line employees need to receive ongoing, hands on training in the effective use of available software. Managers and supervisors should not have the prime responsibility for handling hardware maintenance and problems. The challenge here for the Commissioner is to develop a comprehensive, effective and uniform approach, which may extend to the development of new positions to fulfill these needs.

### **Special Title II Disability Workload**

SSA is currently faced with a huge and essentially unanticipated workload in the form of literally hundreds of thousands of cases that have come to be termed Special Title II Disability cases. These involve situations wherein there was a failure to properly identify SSI recipients who, after becoming entitled to SSI payments, subsequently became potentially eligible for Title II benefits. At that point an application for Title II benefits should have been solicited and processed. Having now identified these cases, SSA is now obligated to secure and process applications. This will involve a very significant and unanticipated expenditure of SSA's frontline field office resources. This is a very difficult challenge for the Commissioner because it will take a significant number of SSA's best and brightest frontline Technical Experts to handle this workload. These people will not be available to help handle the normal and expected workload, which continues to grow. This is also not a situation that can be resolved with additional money alone. The Commissioner needs the option and authority to hire additional frontline field office Claims Representatives to help ease the additional burden that will result from using the afore mentioned "experts" on this unanticipated workload. Without this option and authority, service to the public, in terms of current service, will undoubtedly suffer.

### **Summary**

As indicated at the beginning of my statement, the challenges discussed are from the perspective of SSA's frontline managers and supervisors. They are by no means comprehensive, but they are, in our judgement, directly related to the level and quality of service SSA provides to our citizens on a daily basis. The NCSSMA is anxious to work with and help SSA's new Commissioner as she tackles the difficult challenges ahead.

We have every hope and confidence that she will be successful and that SSA will continue to be among the premier organizations in government.

Again Mr. Chairman, I thank you for this opportunity to address the Subcommittee. I would welcome any questions that you or your colleagues may have.

---

### **Statement of Nancy G. Shor, Executive Director, National Organization of Social Security Claimants' Representatives, Midland Park, New Jersey**

This statement is submitted on behalf of the National Organization of Social Security Claimants' Representatives (NOSSCR). NOSSCR's current membership is approximately 3,450 attorneys and others from across the country who represent claimants for Social Security and Supplemental Security Income (SSI) benefits. Collectively, we have many years of experience in representing claimants at every level of the administrative and judicial process. NOSSCR is committed to providing the highest quality representation and advocacy on behalf of persons who are seeking Social Security and SSI benefits.

During my more than twenty-year tenure as the NOSSCR Executive Director, SSA Commissioners and other officials at the Social Security Administration have been willing to meet with us and other advocacy groups to discuss issues important to our membership and to claimants. This has proven to be an effective way of addressing our concerns before they become serious problems requiring other types of intervention and we look forward to continuing this dialogue with the new Commissioner and her management staff. I am very encouraged by Commissioner Barnhart's recent decision to adjust the maximum amount payable to representatives in the fee agreement process, which was a topic at the Subcommittee on Social Security's hearing in May 2001. I want to thank her for taking this action since, despite the statutory authority to do so, no other Commissioner since the legislation's inception in 1990 had adjusted the amount for inflation.

On November 1, 2001, the Subcommittee on Social Security held a hearing on SSA's response to the September 11 terrorist attacks. The testimony presented at the hearing reaffirmed the important and vital role that the Social Security Administration plays in the lives of people in this country. The challenges faced by the Commissioner are not insurmountable. This Statement for the Record will discuss NOSSCR's major concerns, focusing on the disability programs.

### **SOCIAL SECURITY SOLVENCY AND REFORM**

As the debate on Social Security solvency and reform proposals progress, the impact on people with disabilities must be considered. More than one-third of all Social Security benefit payments are made to nearly 17 million people who are not retir-

ees. People with disabilities are paid benefits not only from the disability program but also from many other Social Security programs. We support efforts to require a beneficiary impact statement from SSA on every major proposal under consideration.

In addition, the agency has a role to play in educating the public about the Social Security program. Because the debate on reform focuses on the retirement program, many people are unfamiliar with the other benefits paid by Social Security, including the disability and survivors' programs. SSA should engage in public information outreach activities to ensure that people have a clear understanding of all Social Security programs.

#### **PROVIDING SSA WITH ADEQUATE RESOURCES TO MEET CURRENT AND FUTURE NEEDS**

NOSSCR is concerned about SSA's readiness to deal with the impending increase in its workload as the "baby boom" generation approaches the peak age for onset of disability and, subsequently, retirement. At Subcommittee on Social Security hearings in 2000, testimony painted a bleak picture regarding SSA's ability to deal with the increased work, at the same time that its own workforce will reach peak retirement numbers. To exacerbate this problem, SSA's budget continues to be cut from levels that would allow it to adequately address current and future service delivery needs.

Most cases handled by NOSSCR members are at the ALJ hearing and Appeals Council levels, where current processing times are unacceptably high. Thus, while their medical and financial situations are deteriorating, claimants are forced to wait for many months, if not years, before receiving a decision.

To improve delays, better develop cases and implement technological advances, SSA requires adequate staffing and resources. NOSSCR strongly agrees with the Social Security Advisory Board's unanimous and bipartisan recommendation that SSA's administrative budget, like its program budget, be removed from the discretionary domestic spending caps. Legislation such as H.R. 5447, a bipartisan bill introduced in 2000 by Chairman Shaw and Representative Cardin, would have accomplished this by allowing Congress to approve funding for SSA to address current service delivery needs and planning for the future.

#### **THE DISABILITY DETERMINATION PROCESS**

The vast majority of cases handled by NOSSCR members are claims for Social Security and SSI disability benefits. NOSSCR strongly supports efforts to reduce unnecessary delays for claimants and to make the process more efficient, so long changes do not affect the fairness of the process to determine a claimant's entitlement to benefits.

##### **1. Improve full development of the record earlier in the process**

Developing the record so that relevant evidence from all sources can be considered is fundamental to full and fair adjudication of claims. Unfortunately, very often the files that denied claimants bring to our members show that little development was done at the initial and reconsideration levels. Claimants are denied *not* because the evidence establishes that the person *is not disabled*, but because the limited evidence gathered cannot establish that the person *is disabled*.

The key to a successful disability determination process is having an adequate documentation base and properly evaluating the documentation that is obtained. Unless claims are better developed at earlier levels, other procedural changes will not improve the disability determination process.

NOSSCR supports full development of the record at the beginning of the claim so that the correct decision can be made at the earliest point possible. Claimants should be encouraged to submit evidence as early as possible. The benefit is obvious: the earlier a claim is adequately developed, the sooner it can be approved and the sooner payment can begin. However, the fact that early submission of evidence does not occur more frequently is usually due to reasons beyond the claimant's control. Recommendations to improve the development process include:

- SSA should do a better job explaining to the claimant, at the beginning of the process, what evidence is important and necessary.
- DDSs need to obtain necessary and relevant evidence. Representatives often are able to obtain more detailed medical information because they use letters and forms that ask questions relevant to the disability determination process. DDS forms usually ask for general medical information (diagnoses, findings, etc.) without tailoring questions to the Social Security disability standard. The same effort should be made with nonphysician sources (therapists, social workers) who see the claimant more frequently than the treating doctor and

have a more thorough knowledge of the limitations caused by the claimant's impairments.

- Improve provider response rates to requests for records, including more appropriate reimbursement rates for medical records and reports.
- Provide better explanations to medical providers, in particular treating sources, about the disability standard and ask for evidence relevant to the standard.

## **2. Streamline the process without impairing a claimant's right to a full and fair hearing**

Current processing times at the ALJ and Appeals Council levels are unacceptably high. We agree with the Commissioner that reducing the backlog and processing time must be a high priority. We urge commitment of resources and personnel necessary to reduce delays and make the process work better for the public.

Recently, a number of proposals to change the disability determination process have been put forward. However, these proposals contain some recommendations that we believe would undermine a claimant's right to a fair adjudication process. Key features of a full and fair process include the following:

- **Retain the right to a *de novo* hearing before an Administrative Law Judge.**

A claimant's right to a hearing before an Administrative Law Judge (ALJ) is central to the fairness of the adjudication process. This is the right to a full and fair administrative hearing by an independent decisionmaker who provides impartial fact-finding and adjudication, free from any agency coercion or influence. The ALJ asks questions of and takes testimony from the claimant, may develop evidence when necessary, and considers and weighs the evidence, all in accordance with relevant law and agency policy. For claimants, a fundamental principle of this right is the opportunity to present new evidence in person to the ALJ, and to receive a decision from the ALJ that is based on all available evidence.

- **Keep the record open for new evidence.**

Many recent proposals to change the disability determination process recommend that the record be closed to new evidence either after the DDS or, at least, after the ALJ level. In the past, both Congress and SSA have recognized that such proposals are neither beneficial to claimants nor administratively efficient for the agency.

Under current law, an ALJ hears a disability claim *de novo*. Thus, new evidence can be submitted and will be considered by the ALJ in reaching a decision. However, the ability to submit new evidence and have it considered becomes more limited at later levels of appeal. At the Appeals Council level, new evidence will be considered by only if it relates to the period before the ALJ decision and is "new and material."<sup>1</sup> At the federal district court level, the record is closed and the court will not consider new evidence. However, the court may remand the case to allow SSA to consider new evidence *but only* if (1) it is "new and material" and (2) there is "good cause" for the failure to submit it in the prior administrative proceedings.<sup>2</sup>

As noted earlier, NOSSCR strongly supports the submission of evidence as early as possible. Full development of the record at the beginning of the claim means that the correct decision can be made at the earliest point possible. The benefit is obvious: the earlier a claim is adequately developed, the sooner it can be approved and the sooner payment can begin.

There are a number of legitimate reasons why claimants are unable to submit evidence earlier in the process and, as a result, why closing the record is not beneficial to claimants. Such reasons include: (1) worsening of the medical condition which forms the basis of the claim; (2) the fact that the ability to submit evidence is not always in the claimant's or representative's control, e.g., providers delay sending evidence; and (3) the need to keep the process informal.

Filing a new application is not a viable option because it does not improve the process and may in fact severely jeopardize, if not permanently foreclose, eligibility for benefits. A claimant should not be required to file a new application merely to have new evidence considered where it is relevant to the prior claim. If such a rule were established, SSA would need to handle more applications, unnecessarily clogging the front end of the process. Further, there would be more administrative costs for SSA since the cost of handling a new application is higher than reviewing new evidence in the context of a pending claim.

<sup>1</sup> 20 C.F.R. §§ 404.970(b) and 416.1470(b).

<sup>2</sup> 42 U.S.C. § 405(g).

- **SSA should not be represented at the ALJ level.**

We do not support proposals to have SSA represented at the ALJ hearing. In the 1980's, SSA tested, and abandoned, a pilot project to have the agency represented, the Government Representation Project (GRP). First proposed by SSA in 1980, the plan encountered a hostile reception at public hearings and from Members of Congress and was withdrawn. The plan was revived in 1982 with no public hearings and was instituted as a one-year "experiment" at five hearing sites. The one-year experiment was terminated more than four years later following congressional criticism and judicial intervention.<sup>3</sup>

Based on the stated goals of the experiment, i.e., assisting in better decision-making and reducing delays, it was an utter failure. The GRP caused extensive delays in a system that was overburdened, even then, and injected an inappropriate level of adversity, formality and technicality into a system meant to be informal and nonadversarial. In the end, the GRP experiment did nothing to enhance the integrity of the administrative process.

- **Retain review by the Appeals Council.**

NOSSCR opposes the elimination of a claimant's right to request review by the Appeals Council, which SSA is still testing in the ten "prototype" states. The Appeals Council currently provides relief to nearly one-fourth of the claimants who request review of ALJ denials, either through outright reversal or remand back to the ALJ. The Appeals Council, when it is able to operate properly and in a timely manner, provides claimants with effective review of ALJ decisions and acts as a screen between the ALJ and federal court levels. Elimination of Appeals Council review could have a serious negative impact on the federal courts. We agree with the Judicial Conference of the United States' 1994 statement opposing this plan when first proposed as "likely to be inefficient and counter-productive."

- **Retain access to judicial review in the federal court system.**

NOSSCR supports the current system of judicial review. Proposals to create either a Social Security Court to replace the federal district courts or a Social Security Court of Appeals to provide appeal of all Social Security cases from district courts have been considered, and rejected, by Congress and SSA over the past twenty years.

We believe that both individual claimants and the system as a whole benefit from the federal courts deciding Social Security cases. Over the years, the federal courts have played a critical role in protecting the rights of claimants. The system is well-served by regular, and not specialized, federal judges who hear a wide variety of federal cases and have a broad background against which to measure the reasonableness of SSA's practices.

Creation of either a single Social Security Court or Social Security Court of Appeals would limit the access of poor disabled and elderly persons to judicial review. Under the current system, the courts are more geographically accessible to all individuals and give them an equal opportunity to be heard by judges of high caliber.

Rather than creating different policies, the courts, and in particular the circuit courts, have contributed to national uniformity, e.g., termination of disability benefits, denial of benefits to persons with mental impairments, rules for the weight to give medical evidence, evaluation of pain. The courts have played an important role in determining the final direction of important national standards, providing a more thorough and thoughtful consideration of the issues than if a single court had passed on each. As a result, both Congress and SSA have been able to rely upon the court precedent to produce a reasoned final product.

Finally, the financial and administrative costs of creating these new courts must be weighed against their questionable effectiveness to achieve the stated objectives. The courts, if created, would involve new expenditures. Should limited resources be committed to that purpose instead of increasing resources at SSA? Further, from an administrative perspective, should the focus be on the end of the appeals process rather than on the front end?

### 3. Technological improvements

The Commissioner has announced an initiative to expand the use of video teleconference ALJ hearings. This allows ALJs to conduct hearings without being at the same geographical site as the claimant and representative and has the potential to

<sup>3</sup>In *Sallings v. Bowen*, 641 F. Supp. 1046 (W.D.Va. 1986), the federal district court held that the Project was unconstitutional and violated the Social Security Act. In July 1986, it issued an injunction prohibiting SSA from holding further proceedings under the Project.

reduce processing times and increase productivity. NOSSCR members have participated in pilots conducted by SSA and have reported a mixed experience, depending on the travel benefit for claimants, the quality of the equipment used, and the hearing room set-up.

In 2001, SSA published proposed rules on video teleconference hearings before ALJs. 66 Fed. Reg. 1059 (Jan. 5, 2001). In general, we support the proposed rules and the use of video teleconference hearings so long as the right to a full and fair hearing is adequately protected and the quality of video teleconference hearings is assured.

#### **RETURN TO WORK EFFORTS**

NOSSCR supports efforts that encourage disabled beneficiaries to return to work. Successful implementation of the Ticket to Work and Work Incentives Improvement Act of 1999 is an ongoing process. As a member of the Consortium for Citizens with Disabilities, we endorse the written statement and testimony on this issue presented by Marty Ford.

#### **ANTIFRAUD ACTIVITIES**

Recently passed legislation requires SSA to take steps to prevent fraud in the Social Security and SSI programs. The integrity of the Social Security and SSI disability programs must be protected and cases of true fraud should be uncovered. However, we are increasingly concerned about reports that cases involving very questionable allegations of fraud are being referred for investigation and possible criminal prosecution. While we support efforts that maintain the integrity of the programs, such activities must protect the due process and privacy rights of individuals since they may lead to serious sanctions. To avoid harming vulnerable individuals with disabilities, guidelines and criteria must be sufficiently detailed to ensure that only legitimate and appropriate cases are identified.

In December 2000, NOSSCR and other advocates met with officials from SSA and the Office of Inspector General to raise our concerns and to suggest ways to improve the process. We hope to continue the dialogue in this area.

#### **NOTICES**

Over the past decade, the Subcommittee on Social Security has addressed the serious problems caused by the poor quality of key SSA notices provided to beneficiaries. Despite efforts to improve notices, many of the same problems raised at a 1994 hearing continue to exist, based on testimony at a September 2000 hearing. As noted by the GAO at that hearing, notices continue to be written in complex and archaic language that even experienced advocates, not to mention claimants and beneficiaries, find difficult to decipher. They are written at reading levels beyond the ability of the average person. Moreover, the notices fail to adequately explain the basis for the action taken by SSA. As a result, the poor quality of SSA's notices leads to erroneous and unnecessary loss of benefits and relinquishment of important rights, such as the right to appeal.

The poor quality of notices also affects SSA. Notices that claimants and beneficiaries do not understand cause more work for already overburdened SSA workers including: more telephone calls or in-person visits for explanation of the agency's action; more appeals filed; and more new applications filed.

#### **CONCLUSIONS**

We commend the Subcommittee for holding this hearing to look at the challenges facing the new Commissioner of Social Security. NOSSCR is committed to working with Commissioner Barnhart to improve the Social Security and SSI programs which are so vital to millions of people in this country.

---

#### **Statement of James A. Hill, President, Chapter 224, National Treasury Employees Union**

Chairman Shaw and Members of the Subcommittee:

My name is James A. Hill. I have been employed by the Office of Hearings and Appeals (OHA) of the Social Security Administration (SSA) for more than 19 years as an Attorney-Advisor. I am also the President of National Treasury Employees Union (NTEU) Chapter 224 that represents Attorney-Advisors and other staff members in approximately 110 Hearing Offices and OHA Regional Offices across the United States. I wish to thank the Subcommittee for inviting me to testify regarding the challenges and opportunities facing Social Security disability programs today.

The crisis in disability adjudication at the hearing level of the mid-1990's has returned. Case backlogs and average processing time have increased at an alarming

rate severely diminishing the quality of service provided to the American public. The current situation is even more disturbing because the anticipated workload will significantly increase with the aging of the "baby boomers". SSA must immediately address the current backlog problem and devise a system that will adequately serve the needs of the future.

NTEU makes the following recommendations for action necessary to ensure that the Office of Hearings and Appeals delivers the quality of service demanded by the American people currently and in the future:

1. All qualified OHA Attorney Advisers should be converted to Senior Attorney decision makers and given the authority to issue fully favorable on-the-record decisions. These Senior Attorney decision makers would review all cases coming into the hearing office.
2. SSA should establish a workgroup to examine the implementation of additional attorney decision makers in the OHA hearing offices to work in conjunction with the ALJs in processing the ever-growing workload that faces SSA.
3. SSA should establish a workgroup to examine the issue of introducing an Agency representation into the adjudication process.

Since the mid-1990's SSA's disability program has been in crisis. In the mid-1990s the disability backlog rose to over 550,000 cases and processing time climbed to nearly 400 days at the hearing office level. In 1995 SSA introduced the Senior Attorney Program that was instrumental in reducing the disability backlog to approximately 311,000 cases by September 1999 and reducing processing time to approximately 270 days at the end of fiscal year 2000. Since the termination of the Senior Attorney Program the disability case backlog has risen to approximately 460,000 and SSA projects by the end of FY 2002 the backlog will rise to 546,000 cases.

Additionally, since the mid-1990s SSA has been concerned that its disability program would be unable to meet the needs of the future, particularly in view of the inevitable increase in disability applications caused by the aging of the "baby boomers". That concern was, and remains, well-founded, because it is clear that both the system prior to 1995 and the current system are unable to meet the needs of today's workloads to say nothing of the projected workloads of the future. In order to address this problem the Social Security Administration established the Disability Process Redesign Program (DPR) in 1995. Despite the expenditure of millions of dollars, test after test revealed failure in initiative after initiative. SSA recently announced the demise of the Disability Claims Manager and Prototype programs. They join the Adjudication Officer and Redesigned Disability Systems Programs as failed major initiatives. Additionally, DPR failed to produce an acceptable quality assurance program.

The failure of DPR did not discourage SSA from resurrecting many of its basic concepts under the guise of the Hearings Process Improvement Plan (HPI). One lesson learned from DPR was that testing often disclosed problems. SSA took no chance that testing would reveal problems with the HPI concept and implemented the program without testing. Everyone concedes that like DPR, HPI has failed.

While both programs have failed, the failure of DPR had little direct effect on claimants. The failure of HPI has severely damaged the quality of service delivered to the public. During the time DPR was failing, the disability backlog at OHA fell from approximately 570,000 cases in 1995 to approximately 311,000 cases in September 1999, but since the inception of HPI, the backlog at the hearings level has risen to more than 460,000 cases. This change of circumstances can be attributed to the fact that during the unsuccessful DPR effort, OHA's Senior Attorneys were issuing over 220,000 fully favorable decisions, while the elimination of the Senior Attorney Program and the decisions it produced was one of the "improvements" of HPI.

Under HPI, the Senior Attorney Program was replaced by a triage system in which Attorney Advisers would screen profiled cases (the same profiles used by the Senior Attorney Program) and recommend cases to ALJs that could be paid on the record. This still requires a significant commitment of ALJ resources. However, this process has resulted in a considerable decline in on-the-record decisions emanating from this profiled workload leading to fewer overall dispositions. The rate of ALJ dispositions has not increased, in fact it has declined, leading to a substantial decrease in total dispositions. Workload growth is not the problem. In spite of the small increase in receipts (5.7%), the case backlog has increased by nearly 40%. At the hearings office level we have returned to the crisis situation of 1995, but the expected flood of 'baby boomers' is seven years closer. The service delivery problems have both long-term and short-term ramifications, and the time to address them is rapidly shrinking.

We are in the midst of an emerging disaster precipitated by the demise of the Senior Attorney decision maker and fueled by HPI. The situation continues to deteriorate. Any hope of significant improvement without bold and decisive action is unreasonable. OHA has traditionally maintained a roster of 1000–1100 ALJs. Hiring substantial numbers of additional ALJs to meet future needs is fiscally irresponsible. SSA recently hired approximately 130 new Administrative Law Judges (returning to the norm) but readily admits that this addition will not solve today's problems.

The loss of efficiency caused by HPI, the elimination of the Senior Attorney Program, the precipitous decline in the number of on-the-record decisions, the staggering increase in "unpulled" cases, the expected increase in disability receipts, and the imposition of a new and increased Medicare workload spell disaster. The Social Security Administration must act quickly to deal with the current disability backlog. It must also realistically assess its future workloads and devise processes sufficient to meet the decision-making needs of the future.

#### **SSA Must Re-introduce of the Senior Attorney Program**

The fundamental problem at OHA is that the number of decision makers is insufficient to meet the workload. There is widespread agreement that it is unreasonable to expect an Administrative Law Judge to produce more than 500 dispositions in a year if an acceptable level of quality is to be maintained. If ALJs are the only decision-makers, and unless the Agency is prepared to accept a much greater number of ALJs than currently are employed, the simple arithmetic mandates an ever increasing backlog and skyrocketing processing times. The solution is more decision makers.

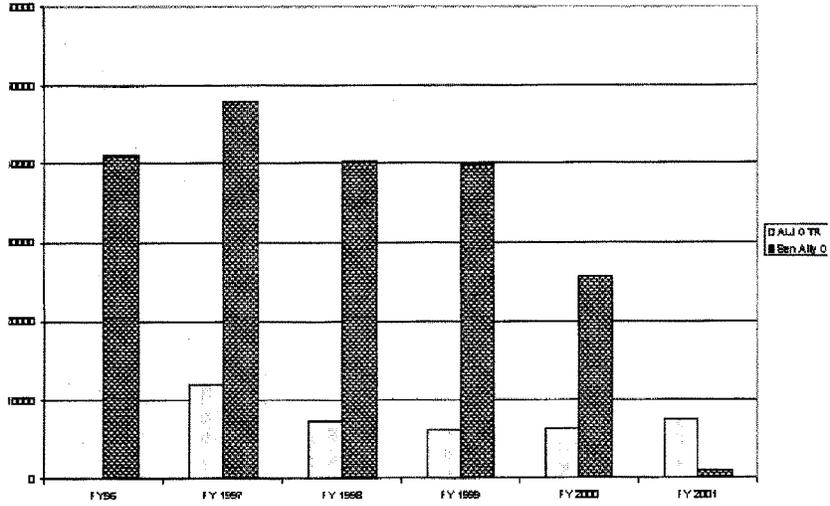
In 1995 the Social Security Administration faced a disability caseload backlog and processing time crisis very similar to that existing today. In order to reduce the backlog and decrease processing time, SSA instituted the Short Term Disability Program. The primary element of that program, designed to reduce both the backlog and processing time, was the Senior Attorney Program.

That program began in 1995 and continued until the advent of the HPI Program. The authority to make and issue fully favorable decisions on the evidence of record was delegated to the Agency's experienced Attorney Advisors. The Senior Attorney decisions combined with ALJ decisions resulted in a substantially higher level of total dispositions than would have occurred if ALJs had been the sole decision-makers. In addition to performing the "Senior Attorney work", the Senior Attorneys also continued to draft ALJ decisions. This arrangement utilized the knowledge, skills, and abilities of these attorneys to issue fully favorable decisions to those claimants whose case did not require a hearing, and to continue to draft the more difficult ALJ decisions. This afforded, on an individual hearing office basis, the flexibility to direct decision making and decision writing resources as necessary to achieve maximum productivity.

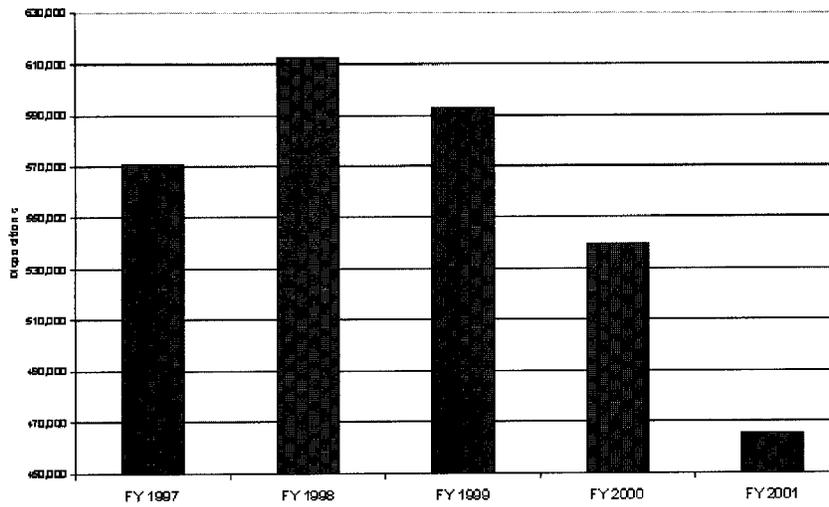
Senior Attorneys issued approximately 220,000 decisions during the course of the Program. The average processing time for Senior Attorney decisions was approximately 105 days. During its pendency the OHA backlog fell from over 550,000 to as low as 311,000 at the end of FY 1999. The correlation is obvious. During the same time period there was also an increase in ALJ productivity demonstrating that dual decision makers was a viable concept. It is readily apparent that processing a large number of cases in such an expeditious manner materially reduced the average processing time for all disability cases at the hearings level in OHA.

While the Senior Attorney Program resulted in a substantial increase in on-the-record decisions, there was not a corresponding increase in the OHA payment rate. In fact the overall payment rate at OHA declined during the course of the Senior Attorney Program. The absence of a significant increase in ALJ on-the-record decisions as the number of Senior Attorney on-the-record decisions declined (because of the downsizing and eventual elimination of the Program) is difficult to explain, particularly in view of the recent significant increase in the ALJ payment rate.

OTR Decisions Reported in the MAR

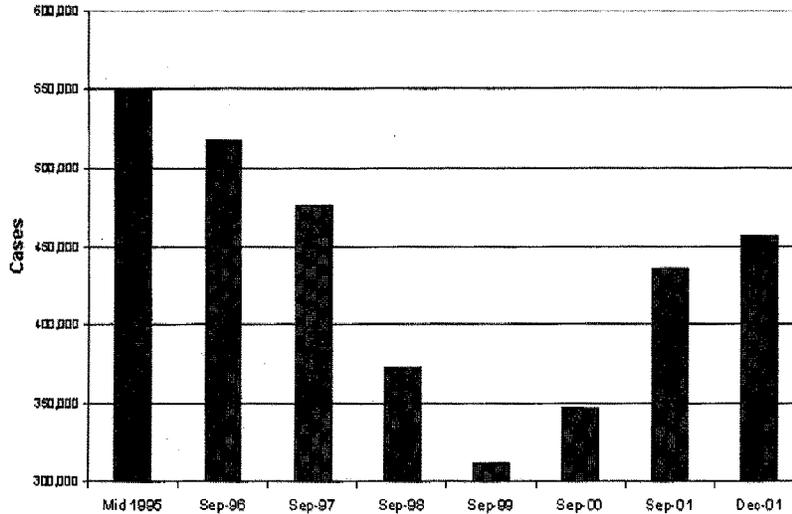


Dispositions



As the Senior Attorney Program was marginalized, OHA dispositions declined.

OHA Case Backlog



Finally, the size of the backlog reflects the success and demise of the Senior Attorney Program.

In July 1998 the Senior Attorney Program was significantly downsized with approximately one-half of the senior attorneys returned to the GS-12 attorney adviser position. The remaining Senior Attorneys spent 100 percent of their time doing "Senior Attorney work". This lack of flexibility doomed this arrangement to a very short lifetime. In fact it lasted only four months before the remaining Senior Attorneys were also assigned ALJ decisions drafting duties. Unfortunately, the number of Senior Attorneys was not increased which led to a significant decline in the Program's productivity. This decrease in productivity led to the rise in unpulled cases and the beginning of the increase in the backlog and average processing time.

The Senior Attorney Program benefited more than just those claimants who received their disability payments far earlier than would otherwise have been the case. Because Senior Attorneys adjudicated the fully favorable on the record cases, staff and ALJ time was not spent needlessly on cases that could be paid without a hearing. They could more timely attend to the other cases, thereby reducing processing time for those cases as well. Another benefit, less appreciated at the time, was that cases paid by a Senior Attorney were not pulled (prepared for hearing). Had the Senior Attorney Program had not been downsized and then eliminated, I believe that there would currently be 90,000 fewer cases waiting to be pulled.

The processing of Senior Attorney cases involved a very limited amount of hearing office staff time. This resulted in the expenditure of far fewer work years devoted to processing Senior Attorney cases than would have been the case had ALJ adjudication been required. This resulted in a significant reduction of administrative costs for those cases that did not require ALJ adjudication. The former Chief Administrative Law Judge stated that OHA may receive as many as 100,000 cases a year that with minimum development could be paid without a hearing before an Administrative Law Judge. The savings in administrative costs arising from the re-institution of the Senior Attorney Program would be substantial.

During the pendency of the Senior Attorney Program, the payment rate at the hearings level significantly declined. Since its demise, the payment rate has returned to near record levels. The Senior Attorney Program was at least in part responsible for this decrease in the payment rate, a key factor in determining program costs.

One of the criticisms of the Senior Attorney Program involved decisional accuracy. Of course that is also one of the chief complaints regarding ALJ decisions. The Appeals Council review of Senior Attorney and ALJ on-the-record decisions found no difference in quality. I am convinced that the formulation and implementation of an effective quality assurance program at the hearing level should be of the highest priority. Quite simply, the time for such a program has come.

Of course the success of the Senior Attorney Program ultimately rests on the competence of the highly trained legal professionals who can serve as adjudicators. These individuals are experienced OHA Attorney Advisors who have many years experience dealing with the intricacies of the legal-medical aspects of the Social Security disability program. They are attorneys well versed in the law, and they are experienced disability practitioners with a wealth of adjudicatory experience in the Social Security disability system.

The immediate conversion of OHA Attorney Advisers to Senior Attorney decision makers as described above will result in an immediate and substantial improvement in OHA service to the public with minimal disruption of current OHA structure and operations and at minimal additional cost. Based upon the Agency's experience with the original Senior Attorney Program, and with the full cooperation of hearing office management (lacking during the original Senior Attorney Program), this measure could produce as many as 75,000–100,000 decisions a year without diminishing ALJ productivity. Based upon previous experience, the average processing time for these cases would be approximately 100 days. Additionally, the minimal staff and complete lack of ALJ time spent on these cases frees the staff and ALJs to spend more time on processing those cases requiring a hearing.

The original Senior Attorney Program was a resounding success. It materially improved the quality of service provided to the public, especially for those individuals who were disabled and entitled to receive their disability decision and benefits on a timely basis. In addition, it resulted in administrative and program cost savings. Senior Attorney decision makers have proven by their performance that pre-ALJ decision making in the OHA hearing office significantly improves the quality of service provided to the public.

SSA has long been concerned that the disability adjudication system will be unable to meet the expected increase of applicants for disability benefits caused by the aging of the "baby boomers". Based upon the performance of the disability system, that concern is justified. However, the basic problem that affects adjudication at OHA today, the lack of a sufficient number of decision makers, will remain unless OHA either greatly expands its ALJ Corps and support staff, creates a magistrate position, develops additional decision-making positions with the authority to grant and deny disability benefits, and/or fundamentally alters the adjudication process.

However, the number of dispositions is not the only chronic problem faced by the adjudication system at the hearings level in OHA. The maintenance of quality assurance has been a long-standing problem at OHA. Managerial oversight of the quality of ALJ decisions unavoidably impacts on the decisional independence guaranteed by the Administrative Procedures Act. As a consequence, very few effective quality assurance activities have occurred at the hearings level.

NTEU believes that it is time for the Social Security Administration to seriously consider fundamentally altering the nature of ALJ hearings by introducing an Agency representative, the Social Security Counsel, who will be responsible for presenting the Agency's case to the Administrative Law Judge. The Counsel would be responsible for developing the record and presenting it at the hearing. This would relieve the ALJ of the primary responsibility for developing the record.

It is the responsibility of the Counsel to present the adjudicator with a balanced and complete record upon which a fair and just decision can be based. It is not the Social Security Counsel's responsibility to obtain a denial in as many cases as possible. The Counsel is also responsible for facilitating the adjudicatory process to ensure that those entitled to benefits receive them as soon as practicable. The Counsel, in concert with the claimant's representative, will resolve issues and propose settlement agreements that would be presented to the adjudicator for approval.

The role of the adjudicator would be reduced to oversight of the pre-hearing process, conducting hearings, and preparation of written decisions based on evidence presented at hearing. The Administrative Law Judge would be relieved of the responsibility of representing the agency and the represented claimant, and would act as a trier of fact. The change to a system that allows ALJs to decide cases based on the merits of the arguments presented by both sides, the facts of the case, the credibility of the claimant and the rules, regulations and law could greatly increase ALJ satisfaction with the process. The ALJ will still be supported in the decision writing and effectuation process. If case preparation by the Counsel's staff replaces

much of the case preparation currently performed by the ALJ's staff, the net impact on administrative cost could be quite small.

NTEU is not alone in advocating the consideration of a process in which an Agency representative plays a vital role. Both the Lewin Group, Inc. and the Social Security Advisory Board have advanced similar recommendations.

In its report dated January 2001, *Charting the Future of the Social Security's Disability Programs: The Need for Fundamental Change*, the Social Security Advisory Board also noted that Administrative Law Judges have been required to balance three roles. They are obligated to protect the interests of both the claimant and the government, and to serve as an objective adjudicator. The Board further noted that approximately 80 percent of disability insurance claimants are now represented by an attorney. The Board also noted that because of the massive increase in the disability appellate workload, SSA has periodically made efforts to increase ALJ productivity which many in OHA believe has impacted adversely on the quality of decision-making. To correct a variety of current problems, the Social Security Advisory Board recommended that the agency be represented at hearings. The Board stated that having a representative present at the hearing to defend the Agency's position would help clarify the issues and introduce greater consistency and accountability into the adjudicatory system. The Board also indicated that consideration be given to allowing the Agency to file an appeal of ALJ decisions.

The extent of the quality assurance problems in the current system is underlined in the report of The Lewin Group, Inc, which stated that the adjudication process at OHA is almost unique. The Lewin Group reported, "We have not encountered good examples of non-adversarial processes." The Lewin Group suggested that one way to improve the non-adversarial system is to make it more adversarial. It suggested that the mechanism for such a change would be to introduce a representative from the Social Security Administration into the adjudication process. This would relieve the Administrative Law Judge of the responsibility of representing the agency, and if the claimant were represented by outside counsel, the responsibility for representing the claimant. The Lewin Group stated that the political issues could be greatly mitigated by appropriate definition of the representative's job and appropriate training of the representatives. They stated that the representative's job is not to obtain a denial in as many cases as possible, and in fact, the representative could be given the authority to allow cases that meet the medical eligibility criteria, perhaps subject to the approval of the ALJ.

The Lewin Group also felt that administrative savings are generated by elimination of a separate quality assurance process that would not be required in an adversarial system, because of the normal appellate process. They concluded that if the system also reduced the allowance rate, as they expected, program savings would be generated.

In conclusion, NTEU makes the following recommendations of action necessary to ensure that the Office of Hearings and Appeals delivers the quality of service demanded by the American people currently and in the future:

1. All qualified OHA Attorney Advisers should be converted to Senior Attorney decision makers and given the authority to issue fully favorable on-the-record decisions. These Senior Attorney decision makers would review all cases coming into the hearing office.
2. SSA should establish a workgroup to examine the implementation of additional attorney decision makers in the OHA hearing offices to work in conjunction with the ALJs in processing the ever-growing workload that faces SSA.
3. SSA should establish a workgroup to examine the issue of introducing an Agency representation into the adjudication process.